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5 SELECT COMMITTEE TO INVESTIGATE THE
6 JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
7 U.S. HOUSE OF REPRESENTATIVES,
8 WASHINGTON, D.C.

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12 INTERVIEW OF: STEVEN A. ENGEL

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16 Thursday, January 13, 2022

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18 Washington, D.C.

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21 The interview in the above matter was held via Webex, commencing at 10:08 a.m.

22 Present: Representatives Lofgren and Cheney.

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2 Appearances:

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4 For the SELECT COMMITTEE TO INVESTIGATE

5 THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL:

6

7 [REDACTED], CHIEF INVESTIGATIVE COUNSEL

8 [REDACTED], SENIOR INVESTIGATIVE COUNSEL

9 [REDACTED] INVESTIGATIVE COUNSEL

10 [REDACTED] CHIEF CLERK

11 [REDACTED], DEPUTY STAFF DIRECTOR

12 [REDACTED], RESEARCHER

13 [REDACTED] CHIEF ADMINISTRATIVE OFFICER

14

15 For the DEPARTMENT OF JUSTICE:

16

17 BRAD WEINSHEIMER, ASSOCIATE DEPUTY ATTORNEY GENERAL

18 EMILY LOEB, ASSOCIATE DEPUTY ATTORNEY GENERAL

19 JOSH GARDNER, SPECIAL COUNSEL, OFFICE OF LEGISLATIVE AFFAIRS

20

21 For STEVEN A. ENGEL:

22

23 ALEXANDER WILLSCHER

24 Sullivan & Cromwell LLP

25 125 Broad Street

1 New York, New York 10004-2498

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2

And, with that, we will go on the record.

3

Good morning, my name is [REDACTED]

4

Good morning, my name is [REDACTED] This is a transcribed interview with

5

Steve Engel, conducted on behalf of the House Select Committee to Investigate the

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January 6th attack on the U.S. Capitol.

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As I said, my name is [REDACTED] My title is senior investigative counsel to the

8

committee, and I am also of counsel to the vice chair of the committee, Representative

9

Liz Cheney.

10

With us from the staff of the committee are [REDACTED] who is chief investigative

11

counsel, and [REDACTED], who is investigative counsel.

12

We may have members of the select committee join us. If we notice them come

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up on the screen, since this is being done virtually, we'll make an effort to announce that

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they have joined us, but we might not always notice.

15

The dep- -- or this transcribed interview will be led by the staff, but the members

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of the committee, if they join, will obviously be free to ask questions anytime if they'd like

17

to.

18

So now maybe we'll go around and do some introductions. I think I've

19

introduced the staff who are here from the committee.

20

Mr. Engel, can you introduce yourself and then your counsel can introduce

21

himself?

22

Mr. Engel. Sure. Steve Engel, former Assistant Attorney General for the Office

23

of Legal Counsel. Currently a partner at Dechert, LLP.

24

Mr. Willscher. Hi, I'm Alex Willscher, Sullivan & Cromwell, LLP, in New York,

25

representing Steve Engel.

1 [REDACTED] Great. And we have some representatives here of the Department
2 of Justice. Could each of you introduce yourselves?

3 Mr. Weinsheimer. Brad Weinsheimer, Department of Justice.

4 Ms. Loeb. Emily Loeb, Department of Justice.

5 Mr. Gardner. Josh Gardner, Department of Justice.

6 [REDACTED] Great, thank you.

7 So, as you know, Mr. Engel, we have a court reporter for this virtual interview.
8 The court reporter will be making a verbatim transcript of the interview. You and your
9 counsel will be given a chance to review the transcript and suggest any corrections before
10 the transcript is finalized.

11 Also, as we discussed before going on the record, we are making a video recording
12 of this interview.

13 Now, Mr. Engel, you've not been sworn in, so you're not under oath, but as I'm
14 sure you know, you still have a legal obligation to tell the truth. Any knowing false
15 statements made to the committee as part of this investigation could be a violation of 18
16 U.S.C. 1001, as well as possibly other statutes. So it's important that you tell the truth at
17 all times, as I'm sure you will.

18 Of course, as you know, if you don't understand a question, please ask us to clarify
19 it. Likewise, if you don't know or don't recall the answer, you're welcome to say so.

20 In terms of logistics, we'll try to keep this fairly short, but if you need to take a
21 break or wish to confer with your counsel, please say so, and we'd be happy to
22 accommodate that at any time.

23 Do you or your counsel have any questions before we get started?

24 Mr. Engel. No, I understand that. And the only other thing I would just flag is
25 that I'm here -- I'm here pursuant to the authorization of the Department, pursuant to a

1 letter, a December 10th, 2021 letter from Brad Weinsheimer to me. And
2 Mr. Weinsheimer has identified the scopes of testimony that I'm authorized to provide
3 today, and I'll adhere to that, subject, of course, to his guidance since he's present as well.

4 EXAMINATION

5

BY [REDACTED]

6 Q Great. Mr. Engel, can you tell us roughly when did you start working at the
7 Justice Department under President Trump?

8 A It was in November of 2017.

9 Q Okay. And what was your position?

10 A The Assistant Attorney General for the Office of Legal Counsel.

11 Q And, in that position, you were appointed by the President, correct?

12 A That's correct.

13 Q And were you confirmed by the U.S. Senate?

14 A I was.

15 Q Okay. And when did you leave that position?

16 A January 20th, 2021.

17 Q And can you just very sort of briefly, in general terms, explain what the
18 Office of Legal Counsel is and what your roles and responsibilities were as Assistant
19 Attorney General?

20 A Sure. One of the Attorney General's core functions is to provide legal
21 advice to the President and the executive branch. That function, the Attorney General
22 has delegated by regulation to the Assistant Attorney General for the Office of Legal
23 Counsel. Therefore, the head of OLC and the office is responsible for providing legal
24 advice to the Attorney General, to the White House, and to the executive branch, writ
25 large.

1 And sort of informally the Assistant Attorney General for the Office of Legal
2 Counsel serves as the general counsel to the Attorney General for substantive matters,
3 you know, within the Department, so there's often a counselor to the Attorney General.
4 Some of that advice is provided by formal legal opinions. Much of it is provided
5 informally.

6 Q And as an Assistant Attorney General, were you one of the senior leaders of
7 the Department of Justice?

8 A I was.

9 Q And did you interact on a regular basis with the Attorney General and the
10 Deputy Attorney General?

11 A I did.

12 Q Okay. I'd like to turn your attention first to exhibit 29, and this document
13 appears to be an email that you sent to Henry Whitaker, Daniel Koffsky, and Rosemary
14 Hart on December 12th, 2020. Did Mr. Whitaker, Mr. Koffsky, and Ms. Hart work in the
15 Office of Legal Counsel at that time?

16 A They did.

17 Q And the subject line says: State AG as special counsel. And you wrote:
18 The AG -- presumably referring to the Attorney General of the United States -- has asked
19 whether he could appoint a state attorney general as a special counsel to investigate a
20 Federal matter.

21 Could you please explain what the Attorney General's request was that led to this
22 email?

23 A Yes. I mean, I think it's as -- as reflected in the email. The Attorney
24 General called me on a Saturday afternoon, asking about a potential proposal to appoint
25 a state attorney general as a special counsel.

1 Again, as also reflected there, the Attorney General wasn't saying that he intended
2 to do it, but he was -- he wanted to know, as a threshold matter, whether it would be
3 legal for the Attorney General to provide, you know, Federal prosecutorial authority to a
4 state attorney general and so that, you know, prior to determining whether he would do
5 it, he first needed to know whether it was legally possible and so he reached out to OLC
6 for that advice.

7 Q And did the Attorney General, who at the time was Bill Barr, did he give you
8 any indication of why he was considering appointing a state attorney general as a special
9 counsel?

10 Mr. Engel. I don't know if you can hear me, but let's go off the record.

11 [REDACTED] Yes, we can hear you, but we will go off the record.

12 [Recess.]

13 [REDACTED] All right. Let's go back on the record.

14 BY [REDACTED]

15 Q Mr. Engel, did Attorney General Barr give you any indication of why he was
16 asking about whether he could appoint a state attorney general as special counsel?

17 A My understanding was he received a request, you know, or the idea had
18 been floated to him from the White House. I don't recall who at the White House he
19 had spoken with or if he indicated that to me at all.

20 Q Okay. And did he give you any indication of what the subject matter might
21 be that a special counsel would investigate?

22 A I believe it was allegations of election fraud.

23 Q Okay. And do you know whether that's allegations in any particular State?

24 A I think the idea was for a special counsel to coordinate the Department's
25 efforts to investigate the various allegations of election fraud that had been coming up in

1 a number of States since the election.

2 Q And did the Attorney General give you any indication of which state attorney
3 general he was considering appointing?

4 A Yes. I believe either he told me or I learned later that it was the Louisiana
5 attorney general.

6 Q And do you know whether it was Attorney General Barr or someone at the
7 White House or someone else who came up with the idea that the attorney general of
8 Louisiana, in particular, could serve as a special counsel?

9 A My -- my impression was that this was an idea that had been floated to the
10 Attorney General and specifically referencing, you know, the Louisiana attorney general
11 as someone who might be well suited to, you know, to pursue this -- that role.

12 Again, it was not -- I did not get the impression that it was the Attorney General's
13 idea or that he had selected I think it's Attorney General Landry, if I'm not mistaken.

14 Q So did the Office of Legal Counsel look into the Attorney General's question
15 of whether he could appoint a state attorney general as special counsel?

16 A We did.

17 Q Okay.

18 A I mean informally on that afternoon.

19 Q And if you look at exhibit 30 --

20 A Yes.

21 Q This is an email exchange between you and Christopher Michael. Who is
22 Christopher Michael?

23 A Chris Michel --

24 Q Michel.

25 A -- was at that time either the chief of staff to the Attorney General or a

1 senior counselor to the Attorney General.

2 Q Okay. And, if you look at the first of these emails chronologically, so the
3 one at the bottom of the page was December 12th, 2020, at 4:37 p.m., Mr. Michel sent
4 you what appears to be just a -- maybe a cut-and-paste from a Louisiana statute.

5 And then you replied that same day, 4:44 p.m.: This would seem to bar him
6 from taking the appointment, although that is a State law question.

7 And then, if you go up a couple of emails to the one you sent at 5:27 p.m. you
8 wrote: I told him, he was not -- he was not displeased. So who is the "him" when you
9 wrote "I told him"?

10 A That would be the Attorney General.

11 Q And what did you tell the Attorney General?

12 A I -- you know, following my conversations with Mr. Michel, which may also
13 have been on the phone as well as email, and my consultation with others at OLC, you
14 know, we had concluded that, at least as a matter of State law, Louisiana had the
15 provision that would prevent a public official like the Louisiana attorney general from
16 taking a Federal position, and, therefore, Mr. Landry, as a matter of Louisiana State law,
17 even if he could receive such a special counsel appointment, could not retain his position
18 in Louisiana, it appeared. And so I so advised the Attorney General that it didn't look
19 like this would be an option.

20 Q And you wrote that he -- presumably meaning the Attorney General -- was
21 not displeased. What was the Attorney General's reaction when you told him that
22 advice?

23 A I mean, so I don't recall specifically my conversation with the Attorney
24 General when I told him. I think, you know, as indicated, it was not his idea, and the
25 Attorney General never, you know, determined that a special counsel was necessary or

1 appropriate for the Department to appoint to investigate election fraud.

2 And so, at this juncture, when this idea had been floated, the fact that this was
3 not a legally available option, you know, made it a simpler answer, you know, on that
4 Saturday afternoon for the Attorney General because, you know, it was not -- when it's
5 not legally available, he doesn't have to decide further whether it's necessary or
6 appropriate or explain that justification.

7 Q Did the --

8 A Yeah. No, go ahead.

9 Q Did the Attorney General say anything to you about his view as to whether
10 the Department should appoint a special counsel to investigate allegations of fraud
11 related to the 2020 election?

12 A I mean, at this point, you know, the Attorney General did not believe it was
13 needed to appoint a special counsel to investigation allegations of fraud. Where the
14 Department heard allegations, you know, the Department would look into them.

15 As of this point, the Department had not seen any allegations that seemed to, you
16 know, at least suggest a material impact on the election. And much -- you know,
17 moreover, appointing a special counsel was outside the ordinary channels, and the
18 Attorney General did not believe that a, you know, a special counsel outside the ordinary
19 channels was necessary. And, ultimately, I think the Attorney General said that publicly
20 later.

21 Q Do you recall whether anybody at the Justice Department, that's within the
22 Justice Department, advocated for the appointment of a special counsel?

23 A I'm not aware of anyone within the Justice Department advocating for a
24 special counsel. Obviously I'm not privy to every conversation on the subject that
25 happened.

1 Q Of course. Did you personally have a view as to whether the Justice
2 Department should appoint a special counsel?

3 A I mean, you know, I don't know that I was best situated at the Department
4 to -- to know, and so I'm only relying upon the information regarding other law
5 enforcement investigations that is told to me by the Attorney General, the Deputy
6 Attorney General, and other senior Department officials.

7 They had never suggested to me that -- that there were, you know, that it was
8 needed to go outside the ordinary channels. So I would have shared that opinion. But
9 again, my -- my factual information on this is derivative of other people.

10 Q I understand. And after Attorney General Barr left the Department of
11 Justice and Deputy Attorney Jeff Rosen became the Acting Attorney General, did you have
12 any conversations with Jeff Rosen when he was Acting Attorney General about the
13 possibility of appointing a special counsel?

14 A I did.

15 Q Okay. And could you please tell us about those conversations?

16 A Well, I -- I think that the -- that Acting Attorney General Rosen, or the Deputy
17 Attorney General when he was designated to become the Acting Attorney General,
18 understood that the President thought that this might be a useful measure for the
19 Department to take to investigate allegations of election fraud and that he knew that he
20 would have to make the decision for the Department as to whether or not this would be
21 appropriate.

22 And so, in advance of him becoming Acting Attorney General, we had a number of
23 conversations in which he sought my advice about the legal standards and the
24 precedence as to when the Department takes the extraordinary step of appointing a
25 special counsel, and we discussed, you know, some of those precedents, the legal

1 standards, and the like.

2 Q And did Mr. Rosen form a view as to whether it was appropriate or
3 necessary to appoint a special counsel?

4 A I mean, ultimately the Acting Attorney General never appointed a special
5 counsel, so I think that, you know, speaks for itself. You know, he never came to the
6 conclusion that it was necessary or justified.

7 Q Did Mr. Rosen give you any indication as to whether anybody at the White
8 House was asking him to consider appointing a special counsel?

9 A I mean, my impression is that there were discussions about this with the
10 White House, you know, at various times, and I don't have a specific recollection of a
11 particular conversation, but certainly prior to him -- you know, the reason we were having
12 these conversations in mid to late December was because he understood that this was a
13 decision he would have to make. And my impression, you know, was that that
14 was -- that reflected what he had heard from the White House, which is that some people
15 there thought it would be a good idea.

16 Q Okay. And when you say "the White House," do you know whether that
17 was the President himself?

18 A I mean, I would assume it would be the President or -- or the chief of staff.
19 You know, those were the folks who they were talking with during this period about the
20 various allegations of election fraud and the like.

21 Q And other than the attorney general of Louisiana, who we talked about
22 previously, did you ever hear names suggested or floated for people who could
23 potentially serve as a special counsel?

24 A I don't recall any specific names. It was really more a matter of whether
25 this would be appropriate rather than a particular name. At least, you know, as it -- as it

1 came to me.

2 Q Okay. And I will note that the vice chair, Representative Cheney, has joined
3 us. And we were just discussing the possibility that was considered by the Justice
4 Department of appointing a special counsel to investigate election fraud. I'll pause to
5 see if Representative Cheney or anybody on the staff has any questions at this time.

6 Ms. Cheney. Thanks, [REDACTED]. I don't have any questions. I just wanted to say
7 good morning, Mr. Engel. Thanks for joining us.

8 Mr. Engel. Good morning.

9 [REDACTED] Yeah, [REDACTED], it's [REDACTED].

10 BY [REDACTED]

11 Q Just quickly, Mr. Engel, it sounds like the legal analysis that you were asked
12 to provide was specific to Louisiana. Is that right? Or did you provide any broader
13 analysis of the -- the appointment of a special counsel even if it was separate from that
14 issue of Louisiana law that you referenced?

15 A On Saturday, December 12th, the question was whether the Attorney
16 General could legally appoint a State official to be a special counsel. There are -- there
17 are precedents for the Department relying upon State prosecutors, local prosecutors, to
18 assist the Department. The Attorney General has broad legal authority to provide
19 Federal prosecutorial authority to others.

20 And so, you know, while it would certainly be uncommon to appoint a senior State
21 official, those were the kind of legal questions we were looking at. Ultimately, it was
22 Louisiana State law suggested it would be a barrier.

23 Subsequently, I had conversations with the Acting Attorney General and his staff
24 about the legal standard for appointing a special counsel just as, you know, for example,
25 you know, when Bob Mueller was appointed a special counsel.

1 There's a Department regulation that governs when the Department should do it
2 and sort of governs the authority that the Attorney General can provide to the special
3 counsel. And so I provided background on that regulation to the Acting Attorney
4 General, as well as discussed some of the precedents in which former Attorneys General
5 had made such designations before.

6 Q I see. So there is a provision -- you're anticipating my question -- by which
7 a special assistant U.S. attorney can be appointed to provide assistance to a U.S.
8 Attorney's office or to Main Justice. That happens with some frequency, right? It's
9 permissible under Federal law and Department regulations?

10 A Yes. No, no, that's right. I mean, and that was -- the question of how that
11 would apply to a senior State official were the issues that were discussed for a couple of
12 hours on, you know, Saturday, December 12th, ultimately resolved based on the State
13 law question.

14 Q Got it.

15 A The broader question of whether it was appropriate to appoint a special
16 counsel for this purpose was, you know, was a discussion that continued, and continued
17 specifically with Acting Attorney General Rosen when the President made clear that he
18 would be the successor, you know, to Attorney General Barr.

19 Q Got it. And no other unique issues beyond the Louisiana statute that came
20 up at any point during this discussion of possible special counsel?

21 A Well, again, I mean, if the question is on December 12th, I think the emails
22 reflect how it came up and how it was resolved. You know, it was a couple of hours on
23 Saturday afternoon.

24 I think, more generally, I don't think it was ever a question that the acting
25 Attorney General could appoint a special counsel, had the discretion to do so, and then

1 determine -- the question really is what are the standards, what are the precedents, and,
2 you know, whether it would be appropriate on the facts and -- if I understand your
3 question.

4 Q Yeah, no, that's exactly right. It sounds like clear that the Attorney General
5 has the authority to do this, that the Louisiana statute meant that particular situation had
6 a State law impediment, but more broadly it was clear to you and others at the
7 Department that this was possible if the Attorney General had decided to pursue it.

8 A Yeah. I mean, I guess I would say that there could have been additional
9 complexities with respect to a senior State official, potentially an elected official like the
10 Louisiana attorney general. Ultimately, I don't know that we ever -- I can't say that we
11 ever fully talked through all of those issues, because the Louisiana State law impediment
12 seemed to resolve the legal question for present purposes.

13 Q Got it. Thanks.

14 [REDACTED] That's all I have, [REDACTED]. Thank you.

15 BY [REDACTED]:

16 Q Okay. And then I just wanted to clarify on one point. So my
17 understanding is it's fairly common for U.S. attorneys to appoint special assistant U.S.
18 attorneys, and that's something outside the special counsel regulation.

19 But then is there also a Department of Justice regulation on the appointment of
20 special counsel, and can you explain to whom that special counsel would report under the
21 regulation?

22 A I mean, so the special counsel regulation is a manifestation of the Attorney
23 General's authority to delegate prosecutorial authority to outside parties or, you know, or
24 other parties. And so special counsel typically under the regulation comes from outside
25 the Department of Justice and is appointed at a time in which the Attorney General

1 determines that, you know, ordinary channels of investigative authorities through Main
2 Justice of the U.S. attorney's offices would not be appropriate, you know, in this
3 particular investigation.

4 And so there's a detailed set of regulations, and the Attorney General has other
5 discretion, too, you know, to appoint quasi special counsels. But obviously notably, you
6 know, Acting Attorney General Rod Rosenstein did that with respect to Bob Mueller
7 earlier on in the administration.

8 Attorney General Barr ultimately provided equivalent authority to, you know,
9 former U.S. Attorney John Durham as well. And, you know, this -- this was a question of
10 whether it was appropriate to take that step with respect to the various allegations of
11 election fraud that had been swirling around the Department.

12 Q Okay. Mr. Engel, if you could look at exhibit 28, and this is an email chain
13 from Thursday, November 19th, 2020. It starts off with Matt Zapotosky from The
14 Washington Post, emailing the Office of Public Affairs at the Justice Department, but if
15 you look sort of at the middle of the first page, there's an email from you. That was
16 November 19th, at 2:59 p.m. to Kerri Kupec, who, my understanding, was the head of
17 Public Affairs, copying Will Levi who I understand was in the Attorney General's office.
18 And you wrote: Matt Zapotosky called earlier and left a voicemail message in which he
19 said that he has been hearing chatter that I may have spoken with Emily Murphy on
20 whether to hold off on ascertainment. That is not true.

21 Who is Emily Murphy?

22 A I believe Emily Murphy was the Administrator of GSA.

23 Q And had you, in fact, spoken with Ms. Murphy on whether to hold off on
24 ascertainment?

25 A No, I had not.

1 Q Okay. Could you explain what the Office of Legal Counsel's role was, if
2 anything, in advising GSA on ascertainment? And by that, my understanding is
3 ascertainment refers ascertaining who the President-elect of the United States is?

4 A Yes, that's right. The Presidential Transition Statute provides for funding
5 for the Presidential transition. That funding is within the discretion of the GSA
6 Administrator, and in order to determine where that funding should go, the
7 Administrator of GSA has a role in determining, ascertaining, who is the, you know,
8 presumed winner of the Presidential election, who's the -- who will be treated under the
9 transition statute as the President-elect.

10 OLC was never requested to advise the Administrator of GSA, as I indicate in this
11 email, on that question of whether and when to make the ascertainment. They did ask
12 us about certain collateral questions about funding and the like. And I think it's
13 reflected in -- in my email exchange with Ms. Kupec and Mr. Levi. And we provided
14 some informal advice.

15 They're also, -- OLC and the White House Counsel's Office played a role in this
16 question in the 2000 election. The Clinton administration White House and OLC advised
17 the GSA Administrator about ascertainment decisions during the -- you know, the
18 contested election involving President Bush and Vice President Gore.

19 And so there was an OLC opinion from that time, which I believe we provided to
20 GSA. We also confirmed that there were not subsequent amendments to the
21 Presidential transition statute, I believe, that would have undermined or changed the
22 significance of that opinion.

23 But we were never asked, you know, affirmatively, you know, does Vice
24 President -- you know, does Vice President Biden, you know, make that -- satisfy the
25 standards, or what are the standards that the Administrator of GSA should consider or

1 the like.

2 So we never -- we didn't actually -- contrary to the -- sort of the chatter that The
3 Washington Post thought, we didn't provide advice on that question.

4 Q Okay. A law professor named John Eastman has been in the news quite a
5 bit with regard to his activities involving advice to the President and the Vice President,
6 regarding the Vice President's role at the joint session of Congress to count the electoral
7 votes. Do you know Mr. Eastman?

8 A I believe I've met him, you know, in the past.

9 Q Okay. Did you have any conversations -- oh, I'm sorry.

10 A Maybe I anticipated your question. Go ahead, please.

11 Q Did you have any communications with Dr. Eastman regarding the 2020
12 election?

13 A No, I have not.

14 Q Okay. On December 1st of 2020, Attorney General Barr conducted an
15 interview with the Associated Press that got a lot of attention. I don't have the exact
16 language with me, but he said something to the effect that the Department had not
17 found evidence of widespread voter fraud that could have affected the outcome of the
18 2020 Presidential election.

19 Did you have any conversations with Attorney General Barr on that issue,
20 meaning, whether there was widespread fraud that could have affected the outcome of
21 the 2020 Presidential election?

22 A I mean, I believe was present for conversations about that subject at various
23 times. I don't remember any specific conversations, but I was aware that Attorney
24 General Barr was considering, you know, making such a statement.

25 Q Okay. And did he give any explanation of the basis for his view that the

1 Department had not found any evidence of widespread voter fraud that could have
2 affected the outcome of the Presidential election?

3 A Well, I think, as he said publicly to I think it was the Associated Press, I mean,
4 I think that the Department had looked into these allegations as they came in in the days
5 after the election.

6 In fact, you know, some people criticized the Attorney General and the
7 Department for reviewing these allegations, while people were -- you know, while States
8 were still counting the votes.

9 The Attorney General thought it was important that the Department look into
10 these issues given that the questions had been raised. And, you know, while the
11 Department, you know, saw at times, as I understand it, you know, there were questions
12 in particular areas, there was nothing of the scale, you know, that the Department found
13 that would have influenced, you know, the ultimate result in the other States. And that
14 is what the Attorney General ultimately, you know, said publicly.

15 Q And do you know who within the Department had the lead for overseeing or
16 coordinating the investigations of election fraud?

17 A I mean, to the -- my impression, I don't know that, you know, was -- I mean,
18 this was being done at senior levels, and it appeared to me that the principal -- Associate
19 Deputy Attorney General, Rich Donoghue, was playing a coordinating role, including
20 when allegations would come in reaching out to the relevant U.S. attorney's offices or,
21 you know, or just sort of advise them of allegations and, you know, ask them whether
22 they had heard things or they would take a look at things that merited taking a look at.

23 Q And do you know whether Mr. Donoghue's view was consistent with
24 Mr. Barr's regarding whether there was evidence of widespread fraud that could have
25 affected the outcome of the Presidential election?

1 A It was generally my impression that the senior Department officials who
2 were involved in looking at these things were all on the same page.

3 Q Did you have any conversations with Attorney General Barr about -- where
4 he indicated why he thought it was necessary to give a public statement regarding his
5 conclusions?

6 A Again, I mean, I was part of a number of conversations. I don't remember a
7 specific conversation between the two of us or the like, but I know that the Attorney
8 General was considering whether, you know, whether it was appropriate to make that
9 statement.

10 The Department is very careful about making statements about pending
11 investigations. And sometimes the Attorney General determines that it's in the public
12 interest to make such statements, but there's always a lot of care that's exercised in
13 making those decisions.

14 And so I think that, you know, given all of the questions that were being raised
15 publicly about the election, you know, the Attorney General thought it might be
16 appropriate for the Department to provide its opinion publicly about what it had seen
17 and what it had, you know, generally speaking, looked into.

18 And I know that there were a couple of weeks in which he was deciding when the
19 time would be right to make that statement. I think he ultimately made it, you know,
20 whenever he did with the Associated Press I think early December, perhaps.

21 Q I believe it was December 1st.

22 A Yes.

23 Q Do you know what the President's reaction was to Attorney General Barr's
24 statement?

25 A I don't know. I mean, you know, I -- you know, I don't recall is the answer.

1 I mean, I suspect that the attorney -- that the President, like he often did, made public his
2 views on the subject fairly quickly. And whatever he said privately to the Attorney
3 General was probably the same publicly, but I don't have a specific recollection of, you
4 know, hearing about that.

5 Q Do you know whether either Attorney General Barr's statement to the AP or
6 Attorney General Barr's views regarding election fraud in the 2020 election more
7 generally ended up having any impact on Attorney General Barr's relationship with the
8 President?

9 A I mean, yeah, I think that how the Attorney General handled these matters
10 did affect his relationship with the President because obviously the President felt very
11 strongly about these issues and about the potential for election fraud.

12 Again, you know, while I have some insight in this from having been close to the
13 Attorney General at the time, I think the President was pretty public about his thoughts
14 on the subject as well.

15 Q Okay. Our understanding is that Attorney General Barr met with the
16 President December 14th, 2020, to inform the President that he was resigning as
17 Attorney General, and then that resignation ultimately became effective, I believe,
18 December 23rd. Do you know why Attorney General Barr resigned before the end of
19 the administration?

20 A Yeah. I mean, I think that the Attorney General was, you know, was
21 frustrated that his relationship with the President had broken down. I think he was
22 getting, you know, tired of the back-and-forth. I think he also thought that the
23 President should have -- you know, that -- that if the President didn't have confidence in
24 Attorney General Barr, that, you know, he should have someone within whom he might
25 have confidence with.

1 I think ultimately what the Attorney General proposed to do was try to part
2 amicably with the President and ensure that the succession at the Department would be,
3 you know, in the regular order. So he met with, you know, the President, proposed that
4 he said he was ready to resign, and they agreed that Acting Attorney General -- that the
5 Deputy Attorney General, Jeff Rosen, would become the Acting Attorney General.

6 Q Do you have any understanding as to why it was important to Attorney
7 General Barr that his deputy, Jeff Rosen, become the Acting Attorney General?

8 A Well, I mean, I think that Attorney General Barr cared a lot about the
9 Department of Justice, and he had confidence in Deputy Attorney General Rosen and
10 thought he would be the natural and appropriate successor.

11 Q And do you know whether Attorney General Barr had confidence in
12 Mr. Rosen specifically in the context of his ability to impartially oversee investigations of
13 election fraud?

14 A I believe that the Attorney General did have confidence in Deputy Attorney
15 General Rosen. After all, he obviously recommended him to be the Deputy Attorney
16 General in the first place, you know, to the President.

17 [REDACTED] Okay. I'll pause and see if anybody has any questions.

18 Voice. No thanks, [REDACTED].

19 BY [REDACTED]:

20 Q Okay. So I'm going to switch topics to the Gohmert v. Pence lawsuit. I
21 believe the complaint in that case was filed December 27th, 2020. What was the
22 Department of Justice's role, as you understand it, in that case?

23 A Well, the Department ultimately defended the Vice President, you know, in
24 the lawsuit, filed an opposition to the preliminary injunction and/or a motion to dismiss
25 the lawsuit. So I mean, yeah, which, of course, is typical for -- you know, the

1 Department generally defends Federal officials in court.

2 Q Uh-huh. But this case I guess was unusual in that the defendant was the
3 Vice President of the United States, but the relief being sought by the plaintiff,
4 Congressman Gohmert, appears to have been something that would have been in the
5 President's interest, in terms of increasing his chances of getting a second term. So did
6 that complicate at all the role of the Justice Department?

7 A I don't think it -- I mean, there was never a question that the Department
8 would oppose the lawsuit. You know, there were significant questions of justiciability
9 and the like and, you know, and questions related to relief.

10 You know, I think, to the extent that you're dealing with a case that involves, you
11 know, a highly publicized issue, to the extent, as you say, that, you know, it could be
12 contrary to the -- the electoral interests of the President, there are complexities there.
13 But, you know, but I think that it was never a question the Department was going to
14 oppose it, if that's your question.

15 Q Okay. And which component of the Department had the lead for litigating
16 that case?

17 A Well, the Civil Division would have the lead.

18 Q Okay.

19 A Of course, you know, and the Associate Attorney General -- or the person
20 performing those functions oversees the Civil Division ultimately has to, at that time, the
21 Acting Attorney General.

22 Q Okay. And with the Vice President being the defendant or the Justice
23 Department's client, so to speak, did the Office of Vice President also have some role?

24 A Yes. I mean, the lawsuit was initially provided to the Vice President or the
25 Vice President's counsel. The Vice President's counsel actually reached out to me to

1 ensure that the Department of Justice was working on it and that OLC would have
2 involvement if the constitutional issues on the merits were, you know, were keyed up.
3 But -- and, actually, I mean, parenthetically, because the Vice President was being sued
4 essentially in his capacity as the President of the Senate, there actually were some
5 discussions because Congress, you know, the Senate has an ability to defend its own
6 officers when appropriate.

7 So I actually think that the Department only got involved with the consent of
8 Senate legal counsel, if my recollection is correct. But, yeah, but Vice President's
9 counsel was involved, and as with any discussions between the White House and, you
10 know, the Department of Justice, the White House Counsel's Office was involved as well.

11 Q Okay. And did the Vice President's office have any view as to what
12 positions the Justice Department should take in the case?

13 A I mean, my interactions, my personal involvement in this was that the Vice
14 President's counsel reached out to me, wanted to make sure the Department of Justice
15 was on top of it, and specifically that OLC would be advised -- would be advising with
16 respect to some of the substantive constitutional issues, if it got that far, if it got to the
17 merits of the lawsuit.

18 Subsequently, then there were conversations between the Vice President's
19 counsel, the White House Counsel, and the litigating components of the Department on
20 these subjects. But I wasn't -- I wasn't particularly involved. I may have been in the
21 loop in some diffuse sense, but I wasn't on the phone with anybody --

22 Q Okay. What was the Office of Legal Counsel's role in the litigation? I
23 mean, you've described the request, but what ultimately did the Office of Legal Counsel
24 do, if anything?

25 A I mean, ultimately we provided some informal advice internally in the

1 Department about some of the issues. We had looked at the Electoral Count Act on an
2 informal basis prior to the election, in the realm of looking around corners, identifying
3 issues that could come up.

4 And so we had actually thought of these issues a bit -- a little bit. We also -- my
5 recollection is that my -- one of my deputies distilled OLC's informal views on a variety of
6 issues in the litigation and provided that to the litigating components of the Department
7 that -- you know, at that time.

8 But, you know, again, it was sort of fairly informal and, you know, in the early
9 stage, and then the Civil Division litigators, you know, wrote up, you know, the
10 Department's views on them, on the case.

11 Q Yeah. And did the White House Counsel's office express any views, to your
12 knowledge, of what positions the Justice Department should take in the case?

13 A I believe the Counsel Office was in touch with the litigating components
14 about the Department's opposition, but I don't -- I wasn't sort of directly involved in those
15 conversations.

16 Q Okay. Who was the head of the Civil Division at the Justice Department at
17 the time?

18 A At the time it was -- the Acting Assistant Attorney General was Jeffrey Clark.

19 Q Okay. And do you know anything about what his personal involvement was
20 in the case?

21 A I don't. You know, I know that Acting Attorney General Rosen was
22 involved. I know that Claire Murray, who was Principal Deputy Associate Attorney
23 General was involved. And I believe, at one point, I spoke with the Deputy Assistant
24 Attorney General, John Coghlan, who is responsible for Federal programs. I never spoke
25 directly with Mr. Clark on this and don't know -- other than that he was on some emails

1 on the subject, I don't have any personal recollection or knowledge of his involvement.

2 Q Okay. What was the outcome of the case?

3 A I mean, the Department opposed and the district court dismissed the case,
4 you know, for lack of standing or as not justiciable.

5 Q Okay. The next exhibit I'd like you to look at is exhibit 2, and it appears to
6 be a sort of lengthy set of calendar entries. At the bottom of each page it says: Rosen,
7 comma, Jeffrey A., ODAG for Office of Deputy Attorney General. Do you know, does this
8 appear to be Jeffrey Rosen's calendar?

9 A That's what it appears to me.

10 Q Okay. If you look at the numbered page 15, and this starts on page 10,
11 so -- it's the entry, in particular, I'm going to ask you about is December 29th, 2020.

12 A Yes.

13 Q And then on that day, from 1:30 to 2:00, it says: Meeting,
14 WH -- presumably for White House -- West Wing, attendees DAG Rosen, Rich Donoghue,
15 and Mark Meadows. Do you know what that meeting was?

16 A Yes. I think I was present at that meeting --

17 Q What --

18 A -- the meeting I'm thinking of.

19 Q What was that meeting about?

20 A We were called over to discuss a governmental issue not related to the
21 election, something that, you know, the White House and DOJ had been working on.
22 So, I mean, if that's subject, you know --

23 Q You don't have to answer if it's -- you don't have to tell us about what the
24 issue was not related to the 2020 election, but did issues related to the 2020 election
25 come up during the meeting?

1 A Yes, yes. And I believe that -- yeah, there -- in addition to the principal
2 purpose for why we were there, this was a meeting with the chief of staff, Meadows.
3 The White House Counsel, Pat Cipollone was there as well and his deputy, Pat Philbin.

4 There were a couple -- a couple of issues were raised, one of which related to the
5 draft Supreme Court brief that some lawyers for the -- outside lawyers for the
6 President had prepared and were urging the Department to file.

7 There was also a reference to allegations about the Italian defense contractor,
8 Leonardo, and some theory that there was someone in Italy who was aware of Leonardo's
9 involvement in affecting the -- influencing the outcome of votes somewhere, and
10 so -- there was general agreement among the participants of the -- at the meeting on the
11 Supreme Court brief -- that the brief was not a good idea and not something the
12 Department could do.

13 And so there was some discussion about reaching out to some of the other
14 lawyers for the President, including actually John Eastman, and suggesting that, you
15 know, that maybe Professor Eastman would not be -- would agree with this group that
16 that was not a good lawsuit to file or a good case, and that could be helpful, you know,
17 persuading the President that it's not something that the Department, you know, should
18 or would do.

19 And then, separately, I believe the chief of staff, you know, requested that the
20 Acting Attorney General and Rich Donoghue look into these allegations involving
21 Leonardo.

22 Q Okay. With regard to the original jurisdiction lawsuit at the Supreme Court,
23 did anybody in the meeting say that they thought it would be a good idea for the Justice
24 Department to initiate such a case?

25 A Not to my knowledge.

1 Q Okay. And do you know why someone thought it might be a good idea to
2 talk to John Eastman, and why he might possibly agree with your view that it was not a
3 good idea?

4 A I think that the perception was -- well, first of all, I think objectively it was
5 not a good idea, and there was hope that Mr. Eastman -- you know, Professor Eastman
6 would agree.

7 I believe also that he was working on a different case for the President, which the
8 President's outside lawyers hoped would get to the Supreme Court separately, perhaps
9 the case in which the candidate -- where, you know, President Trump was himself a party.

10 And so, if Professor Eastman wanted to get to the Supreme Court with this other
11 case, he might think it would be contrary to the interests of that case to have, you know,
12 a meritless original jurisdiction petition being -- being filed at the court, you know, so he
13 might have his own kind of rooting interests as a litigator in a separate proceeding. I
14 think that's what came up. I'm not aware of the other case, but.

15 Q Do you know whether anybody did end up talking to Professor Eastman
16 about this?

17 A I don't know. I believed that there was a -- that Pat Cipollone would reach
18 out. I don't know whether he, you know, he did or not.

19 Q And then you reference Leonardo. Do you recall who brought up
20 Leonardo?

21 A I believe at that meeting the chief of staff, Mr. Meadows, raised the issue as,
22 you know, something that, you know, had come into them. They heard that there was
23 this guy in Italy who supposedly has this, you know, explosive story and wanted to speak
24 with the appropriate U.S. Government officials -- the FBI or the Department of Justice -- in
25 order to provide this explosive evidence, and the chief of staff asked the Department to

1 look into it.

2 Q Do you know what this supposedly explosive evidence was?

3 A I mean, it was articulated that somehow Leonardo is switching votes through
4 some, you know, internet. You know, it didn't sound very plausible to me on its face,
5 and you know, other than being present at the meeting and, you know, the Department
6 being asked to look into it, it was not something I thought much about, to be honest. So
7 I'm not -- I don't know exactly what the theory is.

8 Q And do you know whether the Department looked into it?

9 A I don't know -- let me think for a sec. I mean, I don't know exactly what the
10 Department did with respect to this. You know, Rich Donoghue would know better. I
11 do know that, generally speaking, when these allegations were raised, you know, the
12 Department would, you know, would see what is out there on it or, you know, would
13 have the appropriate person look into it.

14 Whether, in fact, someone at the Department ever talked to someone with
15 claimed knowledge of the subject, I don't know.

16 Q Okay. So, going back to the original jurisdiction suit, if you can look at
17 exhibit 15, and the first one on there chronologically is an email from Molly Michael to
18 Rich Donoghue, Jeffrey Wall, and Jeffrey Rosen. Subject: USA v. Pennsylvania draft
19 complaint, December 28, 2 pm.docx. Who is Molly Michael?

20 A I believe she was the President's assistant.

21 Q And Ms. Michael wrote -- and this is December 29th -- she wrote: Good
22 morning. The President asked me to send the attached draft document for your review.
23 I have also shared with Mark Meadows and Cipollone. If you'd like to discuss with
24 POTUS, the best way to reach him in the next few days is through the operators. And
25 then the White House phone number.

1 Do you know what the attachment was?

2 A I believe it was this draft complaint, you know, purporting to be on behalf of
3 the United States, filing an original jurisdiction lawsuit against a number of States in the
4 Supreme Court.

5 Q Okay. And then, if you look at the last email chronologically, you wrote:
6 Thanks, the author of the document appears to be Larry Joseph, who also represented
7 Texas AG Paxton. Do you know who Larry Joseph is?

8 A I don't other than -- I don't is the answer. I googled him at the time and,
9 you know, figured out that he was a lawyer in the Texas lawsuit -- the Texas original
10 jurisdiction lawsuit.

11 There had -- prior to this, a number of States had filed an original jurisdiction
12 lawsuit in the Supreme Court, seeking to sue other States for -- purportedly on the
13 grounds of various election irregularities, and that the Supreme Court had, you know, had
14 denied review of that -- of that suit.

15 And then I was just curious when this came in, since obviously it styled itself as on
16 behalf of the, you know, the United States, but it came from outside the Department. I
17 was just curious who was the author, and so I checked the properties on the Microsoft
18 Word document and that, you know, reflected Larry Joseph, and that the document -- the
19 original document had been written by someone named Larry Joseph. So I figured out
20 that he had also been on the other lawsuit.

21 Q And Larry Joseph was not a Department of Justice attorney, correct?

22 A No.

23 Q Was it unusual in your experience for somebody outside the Department of
24 Justice to send a draft complaint and ask the Justice Department to file on behalf of the
25 United States?

1 A Yes, that would be unusual.

2 Q Okay. Was it unusual for -- in your experience, for the President of the
3 United States to send to the Justice Department a draft complaint for the Justice
4 Department to consider filing?

5 A Yes, I think so.

6 Q Okay. Do you know whether the President had a view as to whether he
7 wanted the Justice Department to file the complaint?

8 A I mean, I think that the President would often raise ideas in this context and
9 at during this time and would say people are suggesting to him that this is a good idea,
10 you know, that he's got -- he's got lawyers saying that this is a good lawsuit, this is well
11 founded, and the Supreme Court will take this up and, you know, and the Department
12 often would say, you know, in this context, you know, that this is not something that we
13 can do.

14 So I mean, I think that -- I think the President's view was that, if the Department
15 would be willing to do this, the President, I think, would support it. You know, he did
16 support it but in context, and obviously that's why it was being forwarded on to the
17 Department.

18 Q To your knowledge, did anybody who was a representative of the President
19 or acting on behalf of the President ask the Justice Department to file this case?

20 A I mean, I know that, after we received this draft, an outside lawyer kept
21 trying to call the Acting Attorney General, and I think at one point actually did successfully
22 reach him once or twice.

23 You know, the Acting Attorney General told me about that, and, you know, the
24 Acting Attorney General made clear that, number one, he was not going to speak with the
25 outside lawyer about a brief the Department may or may not file.

1 And then I think once or twice he also raised this questions, you know, about, for
2 example, you know, is there any precedent for this, you know, to provide any cases in
3 which the Department has taken a similar tact, and you know, they were unable to do so.

4 Q Do you remember who that outside lawyer was?

5 A I don't recall the guy's name. I mean, I didn't -- you know, I was told who it
6 was, but I don't know. And I believe Acting Attorney General Rosen has testified to it
7 and -- you know, in front of the Senate Judiciary Committee. But I don't remember the
8 guy's name.

9 Q Okay. What was your view as to whether or not the Justice Department
10 should file the complaint?

11 A This was a meritless lawsuit. It was not something that the Department
12 could file. Putting aside the irregularity of an outside party drafting it, there was never a
13 question that the Department was going to file this, to be clear.

14 It was just -- you know, there was not a legal basis for such a lawsuit, and the
15 United States Department of Justice doesn't have a legal interest in, you know, the
16 Presidential election. That's for the candidates, that's for the campaigns to litigate.

17 And so, you know, the folks who prepared this, you know, I think, you know, were
18 not familiar with, you know, how the Department operates. So, you know, I did not
19 think it was a good idea.

20 Q Who within the Department of Justice was involved in the decision whether
21 or not to file the lawsuit?

22 A Well, it was -- as the email reflects, it was originally came in through the
23 Acting Attorney General, through Rich Donoghue, and it came to the Acting Solicitor
24 General as well. And, you know, the Acting Attorney General, you know, was the one
25 who ultimately had the conversations with the President about this lawsuit and about,

1 you know, not filing it.

2 And I know that, you know, the Office of the Solicitor General also prepared, you
3 know, a memo explaining why this lawsuit would not be well founded so that, you know,
4 the Acting Attorney General could better explain to the President why this is not
5 something that we were able to do.

6 Q Okay. You mentioned the Acting Attorney General, Jeff Rosen, discussing
7 this with the President. What do you know about those conversations?

8 A Right. I know that, you know -- you know, that the Acting Attorney General
9 was anticipated that he would have to explain to the President why this was not
10 something that we could do. That subject came up, you know, also in that meeting, you
11 know, with the chief of staff, you know, thereafter.

12 And the Acting Attorney General asked me to prepare a kind of one-page of
13 talking points explaining, that he could rely upon in explaining to the President why this
14 not something that the Department, you know, could or would do. And then, in fact, I,
15 you know, was told that there was such a conversation.

16 Q Okay. And I believe Representative Lofgren has just joined us.
17 So, Mr. Engel, if you can look at exhibits 18 and 19.

18 A Sure. I can only open one at time, but one pager, yep.

19 Q Yeah, you'll see 18 appears to be just an email from you to Rich Donoghue
20 dated December 31st. Subject: One pager. Attachment, it says: U.S. v. Penn OJ
21 suit.docx -- presumably U.S. v. Pennsylvania original jurisdiction suit. And then exhibit
22 19 appears to be the one-pager that went with it. What is this document?

23 A Yeah. This is, as I referenced, the Acting Attorney General asked me to
24 prepare a one-pager that he could rely upon in, you know, explaining to the President
25 why the Department wouldn't -- wouldn't be filing this lawsuit. And so, you know, the

1 Office of the Solicitor General had prepared a -- you know, a lawyer's document
2 explaining various legal grounds why it didn't work.

3 This document is more on the order of talking points to explain, you know, why
4 we couldn't and why it's not a good idea, you know, and that's as reflected in the
5 documents. And this is something that I prepared, presumably that morning. I don't
6 know if I started working on it the night before, but.

7 Q And when you say -- I think you may have described it as talking points. So
8 these are talking points for the Acting Attorney General to use. Is that correct?

9 A That's right.

10 Q So it's essentially written in his voice?

11 A Yeah, sure.

12 Q Okay. And the title is: Evaluation of Potential Original-Jurisdiction Suit in
13 the Supreme Court. You wrote: There's no legal basis to bring this lawsuit. We
14 cannot ethically file a suit without a legal basis, and we are certain that if we did so, the
15 justices would promptly dismiss it. Anyone who thinks otherwise simply does not know
16 the law, much less the Supreme Court. If there were a legal mechanism available, we
17 would pursue it, but there's not, and this case is definitely not it, end quote. Does that
18 represent your views at the time of that lawsuit?

19 A Yes. And I think fair to say represented the Acting Attorney General's views
20 as well.

21 Q Okay. And did it also represent the views of the Acting Solicitor General?

22 A I think so. I don't know whether -- I mean, yes, is the short answer. I
23 don't -- I don't recall providing this document to the Acting Solicitor General before I gave
24 it to the Acting Attorney General. But I mean, it's fair to say that the Solicitor General's
25 Office and the Acting Solicitor General was, you know, was not on board with this. And

1 they had, in fact, you know, submitted that document that I referenced.

2 Q So, when you say "not on board with this," this being the lawsuit as opposed
3 to the memo?

4 A Right. No, again, I mean, this is -- this is not something that the
5 Department could do or would do.

6 Q Okay. Did anybody at the Department, to your knowledge, advocate for
7 filing this lawsuit?

8 A Not to my knowledge.

9 Q And then the second paragraph, second sentence, it says: I -- so again this
10 is in the Acting Attorney General's voice -- I asked Rich, I asked the Acting Solicitor
11 General, and I asked Steve Engel to review this closely and let me know if there were
12 anything we could do. They were unanimous in their conviction that this suit cannot be
13 brought, end quote.

14 Does that accurately reflect the efforts that the Acting Attorney General had made
15 and the advice that he got?

16 A Yes.

17 Q Then, in the fifth bullet, I think it is, the one that starts with the underlying
18 sentence, "the lawsuit does not ask for relief that could make any difference," you wrote:
19 The lawsuit would be brought against the States, but there is no longer any role left for
20 the States in the Presidential election. They have appointed their electors, and the
21 electors have now cast their votes and sent them to Congress. There's nothing that the
22 States could lawfully do now to stop Congress from opening and counting those votes
23 next Wednesday, and, therefore, the time to challenge the States had passed, end quote.

24 Can you explain what you meant by that?

25 A Yeah. I mean, I think under our Constitution, you know and the Electoral

1 Count Act, the States have a role in appointing the electors, and there's a date after which
2 the States certify, you know, the electors.

3 And, in all the States, the States had certified a slate of electors. The electors
4 then had voted and had sent their, you know, had sent their votes on. There's actually
5 very detailed provisions about mailing the electors -- there's many copies of the electoral
6 votes, actually, that go to various public officials in order to ensure that -- that the
7 electors' votes arrive appropriately.

8 So, as summarized here, the point was, the States had actually certified the
9 electors. The electors cast their votes. They were arriving for the joint session of
10 Congress on January 6th, and so it's not obvious legally that the States, that you could tell
11 Pennsylvania, or that you could tell, you know, Texas or Georgia, you know, that they
12 can't do something, you know, that they can't do it now. It's not, you know, it wasn't
13 evident at that point, that the votes had already been cast.

1

2 [11:08 a.m.]

3

BY [REDACTED]:

4

Q It has been widely reported that on several dates after the electoral votes had been cast that the President had calls or meetings with State legislators or State executive branch officials about the electors from those States.

7

In your opinion, could those State officials have done anything to change the electors that have already been certified?

9

A Well, look, I'm not aware of it ever having been done that way. No State has certified the votes and then regretted it and changed its view after the fact. Obviously, in the context of this memo, the view was it's too late. It's been done.

12

That said, I can't tell you that the question of a State changing its mind with its certified votes has ever been litigated.

14

So had that actually happened -- and it didn't -- that would create a new question which to be adjudicated either by the courts or potentially by the joint session of Congress if it came up.

17

So, I mean, the true answer is in the statutes of the Constitution, it did not appear the States anymore had a role. That's the not to say that there couldn't be an ambiguity if a particular State had taken the extraordinary measure of trying to change things after the fact, but it's never happened before.

21

Q Do you know what the President's reaction was when the Acting Attorney General told him that the Justice Department would not file the lawsuit?

23

A I mean, I wasn't on the call, so I don't know. But I think he accepted it, that the Department wasn't going to file the lawsuit.

25

[REDACTED] Okay. I'll pause and see if anybody has any questions.

1 [REDACTED] No. No thanks.

2 [REDACTED] Okay. Mr. Engel, if you could look at exhibit 20. And it looks like
3 this is also from December 31st. The first one chronologically is from you to Jeff Rosen,
4 Rich Donoghue, Claire Murray, "Subject: Voting Rights Act."

5 You wrote, "Just to close the loop on the VRA question asked this morning."

6 Do you recall who asked the question about the Voting Rights Act?

7 Mr. Engel. It would have been the Acting Attorney General. And we have
8 a morning meeting, daily meeting, which probably -- I think it was at 9 a.m. or whatever.
9 So we must have discussed the question about the lawsuit.

10 [REDACTED] Okay. And do you know why he was asking about the Voting Rights
11 Act issue?

12 Mr. Engel. Well, I think this was at the time in which he was preparing for a
13 conversation with the President about the subject. And the question may have come up
14 about, I think, the precedent for the lawsuit or the basis for standing. And I think either
15 I suggested or I raised this point, the basis for standing that was identified in the
16 jurisdictional statement in this draft petition.

17 [REDACTED] I'm curious about the data that they had. Could you talk a little
18 bit more about what sort of --

19 Mr. Engel. I'm hearing crosstalk.

20 [REDACTED]

21 All right. We muted him. I'm sorry about that.

22 Mr. Engel. That's all right. So I think I was just -- you know, I was explaining
23 that I had gone back and looked at the petition and looked at -- I think it was in the
24 jurisdictional statement -- and said that the things they're citing for the U.S. interest and
25 U.S. standing don't stand for what they're saying.

1 [REDACTED] Okay. And I won't -- we'll put this document, exhibit 20, in the
2 record, so I won't read the entirety of the advice you gave. But can you just kind of
3 summarize a little bit more what your conclusion was about the Voting Rights Act?

4 Mr. Engel. Yeah. No. Just, I mean, this wasn't the citation for the U.S.
5 interest. The interest of the Department of Justice in this lawsuit was a citation to the
6 provisions, the criminal provisions, apparently, that allow the Department of Justice to
7 bring criminal prosecutions for people who violate the Voting Rights Act.

8 But the specific allegations in this lawsuit or the irregularities in State election
9 procedures and the like were not alleging any criminal violations of the Voting Rights Act.
10 Again, I'm doing this based off the email rather than having looked at this in quite some
11 time.

12 And, clearly, this wasn't a criminal lawsuit. So in other words, whatever the
13 proposition is about the Department of Justice being able to bring a criminal prosecution
14 against an individual who willfully violates the Voting Rights Act, a civil lawsuit in the
15 Supreme Court against a State does not implicate that, those prohibitions. And,
16 therefore, those provisions would not provide a basis for standing for the Department of
17 Justice.

18 [REDACTED] Okay. I'll pause again to see if anybody has any questions.

19 BY [REDACTED]:

20 Q Okay. I'm going to change topics now and discuss the role of Jeff Clark at
21 the Department of Justice. And if you can first look at exhibit 5, which is an email from
22 Rich Donoghue to you dated Monday, December 28th, at 11:41 p.m. And I won't read the
23 whole thing, but he writes, "Please come by my office so I can read you into some antics
24 that could potentially end up on your radar."

25 Do you know what the antics were that he was referring to?

1 A Yes. He wanted to tell me about the conversation that Acting Attorney
2 General Rosen and he had had with Jeff Clark on that sort of evening, Monday evening
3 before.

4 Q And what did he tell you about that conversation?

5 A In this conversation, Acting Assistant Attorney General Clark -- or Assistant
6 Attorney General Clark, I guess -- had reached out to them with this proposal that the
7 Department of Justice would send a letter to -- it was styled a letter to Georgia, but I think
8 he intended it to go to a number of States.

9 And the Department would express the view that they had found irregularities in
10 these States' voting that suggested to them that the wrong person was selected by each
11 State and to encourage the States, the Georgia legislature, to come back in extraordinary
12 session, basically pass a new law to void its earlier certification of the electors and/or
13 appoint new electors or something.

14 And he thought that this could be good for the Acting Attorney General, for Rich
15 Donoghue, and for he to jointly send this letter to the States encouraging them to pursue
16 this course of action.

17 Q And did you get a copy of the letter?

18 A Yeah. On Monday morning or Tuesday morning, Rich Donoghue handed
19 me a copy of Jeff Clark's email and the attached letter. I think he may also have given
20 me a copy of his response as well because Rich responded strongly against this proposal.

21 Q Okay. And we've seen his written response, but to the best of your
22 recollection, including what Mr. Donoghue said to you, what was Mr. Donoghue's
23 reaction to the proposal?

24 A Well, I mean, he thought that this was ridiculous and not something that the
25 Department would do.

1 Q Okay. What was your reaction to the proposal?

2 A I agreed with Mr. Donoghue.

3 Q Okay. Do you know what Mr. Rosen's reaction was to the proposal?

4 A He likewise agreed. I mean, this was something that did not seem to be
5 appropriate for the Department to do, nor did it seem like it would be effective at
6 anything other than just embarrassing the Department. So it was surprising to all of us
7 that Mr. Clark thought that this was a good idea.

8 Q Why would it be inappropriate for the Department to send a letter like that?

9 A Well, I mean, on a couple of bases.

10 One, and I'm not the custodian of the facts here, but senior Department officials
11 had made it clear that they had not found evidence to indicate that the election
12 had -- that voter fraud had affected the results of elections. That's what Attorney
13 General Barr said and Acting Attorney General Rosen likewise said. So the factual
14 presupposition seemed wrong.

15 It also seemed very odd for the Department of Justice to be importuning States
16 how to do their duties. And as we indicated earlier, the notion of an extraordinary
17 session in which a State would cancel certified electors and votes is something that's
18 never happened before. It was very, very odd. It seemed unlikely to be effective. In
19 other words, nobody would listen even if the Department of Justice thought this was
20 appropriate to send out.

21 Q Do you know whether Mr. Clark discussed this idea or the letter with
22 anybody outside the Department of Justice?

23 A Well, I mean, it became clear, and I think Mr. Clark said to the Acting
24 Attorney General and to Rich Donoghue that he had discussed this with the President at
25 some point, that he had pitched this to the President and some of his advisers that this

1 was a thing that should be done.

2 I don't have any insight into really how those conversations came about.

3 Mr. Clark said that Congressman Perry had introduced him to the President. But other
4 than that, how Mr. Clark came to be speaking with Congresswoman Perry and how
5 ultimately they went to the President and who else was part of that, I don't know. I
6 never received any information on that.

7 Q You were an Assistant Attorney General. In your experience, was it unusual
8 for an Assistant Attorney General to meet or talk directly with the President of the United
9 States without the Attorney General or Deputy Attorney General involved?

10 A Sure. I mean, yeah. I mean, that would be unusual.

11 In my role, I had a greater degree of contact with the White House in the context
12 of providing legal advice than other Assistant Attorneys General would. But even in that
13 context it would be unusual, obviously, for any Assistant Attorney General, including at
14 OLC, to speak with the President without the knowledge of the Attorney General.

15 Q Okay. And did either Mr. Donoghue or Mr. Rosen indicate to you whether
16 or not they knew in advance that Mr. Clark was going to be talking to the President?

17 A No, they were not aware of Mr. Clark speaking with the President until he
18 told them, and they indicated they were quite surprised by that.

19 Q Okay. Did they tell you anything about whether they gave any instructions
20 to Mr. Clark about whether he could do that again in the future?

21 A I do know that at some point in the conversations -- there were a few
22 conversations between them and Mr. Clark. At some point, they made it clear that he
23 should not be having these conversations. They may well have done it at the first
24 conversation. I just don't recall sitting here.

25 Q Do you have any knowledge of whether Mr. Clark continued to have direct

1 conversations with the President after they told him not to?

2 A It appears that he did.

3 Q So going back to the email where Mr. Donoghue said he wanted to read you
4 into some antics, do you have any understanding as to why he thought it was important
5 that you be read into these antics?

6 A I think probably the two reasons were, one, as a legal matter, I was next in
7 line after the Acting Attorney General in the Department of Justice's order of succession.
8 So if the Acting Attorney General had resigned and the President had taken no other
9 action, I would have been the Acting Attorney General.

10 I think also, as the head of OLC and kind of informal general counsel, they had
11 consulted me on questions like this, so they wanted to read me in on that.

12 Q Did you have any reason to think the Acting Attorney General might resign?

13 A I don't think -- certainly, he was not intending to resign. I think it was more
14 in the context of if he were directed to do something that he couldn't do. And, of
15 course, the President at any point has the discretion to replace the Acting Attorney
16 General.

17 Q And he could have replaced the Acting Attorney General with someone
18 other than you. Is that correct?

19 A Yes. Yes. He has that authority under the Vacancies Reform Act. And
20 President Trump had done that following the resignation of Attorney General Sessions
21 when the next in line would have been the Deputy Attorney General at the time.

22 Q So if you look at exhibit 6. It's an email. The first one chronologically is
23 December 31st, so New Year's Eve, 4:20 p.m., from you. Looks like it's to Rich
24 Donoghue. But then Mr. Donoghue responds at 6:18 p.m. on New Year's Eve. He
25 writes, "Just left WH," presumably for White House. "Will call in a bit."

1 Do you know why Mr. Donoghue was at the White House?

2 A My recollection was that Mr. Donoghue and Acting Attorney General Rosen
3 were over there at the White House discussing these issues, I think including the Jeff Clark
4 plan. And I must have known that they were going over there. And I had to leave to
5 pick up dinner for our New Year's Eve party, and so I just let them know that I was -- I'd be
6 around to talk later. But that's what the email reflects.

7 Q And what did Mr. Donoghue tell you about that meeting?

8 A I mean, what I recall is that the issue of Jeff Clark becoming Acting Attorney
9 General had perhaps been raised at that meeting, that Jeff Clark -- if Acting Attorney
10 General Rosen was not inclined to do this plan, the President would consider whether
11 Acting -- you know, whether Jeff Clark should be put in as Acting Attorney General.

12 The decision -- I was told that this would hold until after the New Year's holiday,
13 and so the President, I believe, was heading down to Florida for the holiday. It was
14 expected that the discussion would resume on, I think, January 4th, which would be
15 Monday after the holiday, on this.

16 And so I believe Mr. Donoghue also mentioned to me that Jeff Clark had a theory
17 that Chinese thermostats had changed the voting, had changed some votes in voting
18 machines or something, and seemed to believe that the Director of National Intelligence
19 may have access to classified information that would provide support for that theory.

20 And so there was a discussion of, you know, that Mr. Clark would be given access
21 to classified information related to what the intelligence community knows about the
22 foreign election interference and the like, in part, I think because it was hoped that
23 presenting him with the information that the intelligence community did have would
24 dispel this notion of Chinese thermostats or whatnot.

25 And so I think it was -- at least I think as of Wednesday Mr. Donoghue advised me

1 that this is something that they were to go forward with providing Mr. Clark, because
2 Mr. Clark's information -- Mr. Clark had no role in investigating allegations of election
3 fraud or otherwise within the Department. So his conviction that this was something
4 the Department should say appeared to be based upon information he received from
5 outside the Department.

6 So as his idea, his involvement in the President's contemplation of whether
7 Mr. Clark would be a suitable replacement became a possibility, the notion of making him
8 more educated about what senior Department officials knew seemed to be a prudent
9 idea. So I think Mr. Donoghue said that Clark would get this briefing over the course of
10 the holiday weekend.

11 Q And do you know where Mr. Clark got his information suggesting, I think, as
12 you said, that Chinese thermostats may have changed the outcome of the election?

13 A I don't know. He referenced -- the only time I ever spoke with him about
14 this in his presence would have been in ultimately the January 3rd meeting with the
15 President. And so I don't know whether it came from him or if Rich Donoghue told me
16 or Acting Attorney General Rosen.

17 But he referenced a former intelligence, a military intelligence official that he had
18 been speaking with or other kind of outside advisers, but I don't -- I never heard any
19 names of who he spoke with, and, again, this probably is secondhand.

20 Q Do you know whether Mr. Clark ultimately got the briefing from the Office of
21 the Director of National Intelligence?

22 A Yes. On Saturday morning, he received a briefing from ODNI or from the
23 DNI.

24 Q Okay. Without saying anything that's classified in this unclassified
25 environment, are you able to tell us, if you even know, what the conclusion of the

1 Director of National Intelligence was about the Chinese thermostats?

2 A I mean, all I can say is that the briefing was intended to show Mr. Clark that
3 some of these theories were -- that there was no support for these theories.

4 I wasn't present at that briefing specifically, but certainly it was never the view of
5 the Department of Justice or the intelligence community that foreign election
6 interference materially changed votes or changed votes there.

7 So my impression, and I received an unclassified report of the briefing after the
8 fact that Mr. Clark was so advised by the DNI, but he remained unpersuaded.

9 Q I'm sorry. What was the last part you said?

10 A He remained unpersuaded. Whatever information was presented to him
11 was not enough to lead him to conclude that these allegations were out of bounds or did
12 not happen.

13 Q And how do you know that he was unpersuaded?

14 A I spoke with Rich Donoghue on Saturday evening, I think, which was after the
15 event, and I think Rich shared that with me. And obviously on Sunday Mr. Clark was
16 prepared to become the Acting Attorney General if the President had accepted his plan.

17 Q Do you know how this plan or proposal of Jeff Clark becoming Acting
18 Attorney General instead of Jeff Rosen came about?

19 A I mean, I don't -- I mean, I know that Jeff Clark put himself forward to the
20 President as someone who would provide more assistance or be more aggressive in
21 investigating election fraud and taking action than the Acting Attorney General, Acting
22 Attorney General Rosen would be.

23 Originally, Clark's plan was that he would enlist the support of Rosen and
24 Donoghue to do this. Ultimately, when it was clear that they would not support him,
25 there were conversations in which it was discussed -- I wasn't part of these

1 conversations -- but obviously that the President was considering replacing Acting
2 Attorney General Rosen with Mr. Clark.

3 And then that came to a point in which the President would make a decision one
4 way or the other, which we originally thought was going to be January 4th, and it turned
5 out ultimately to be on January 3rd.

6 Q Okay. And then if you look at exhibit 7. This is January 2nd, 2021, 8:08
7 p.m. Rich Donoghue writes to you, at the end, he writes, "I want to update you on
8 today's events."

9 That could be what you already referred to of the conversation you had about the
10 ODNI briefing for Jeff Clark. Is that what it was?

11 A Yes. That's right.

12 Q Okay. Is there anything else that you can recall from that conversation that
13 you haven't already told us?

14 A I don't recall anything else specifically. The event of the day was the
15 briefing. I believe that Acting Attorney General Rosen and Rich Donoghue spoke with
16 Clark some more. Clark was still considering whether he was willing to be, he told them,
17 the Acting Attorney General.

18 And I think he -- he still remained unpersuaded in terms of he was on a different
19 page from Acting Attorney General Rosen and Donoghue on the questions of election
20 fraud and what the Department could or should do about it.

21 Q Do you know whether the FBI had any views about election fraud and
22 whether it could have affected the outcome of the election?

23 A I mean, the FBI's intel office is part of the intelligence community, and so
24 that would filter up to the DNI as well. I can't say I recall specifically receiving an FBI
25 briefing on the subject, but I have no reason to believe it was any different than the views

1 of senior Department of Justice leadership on this question.

2 [REDACTED] Before I turn to the January 3rd meeting with the President, I'll pause
3 to see if anybody has any questions.

4 [REDACTED] Yeah, [REDACTED] It's [REDACTED]

5 By [REDACTED]:

6 Q Mr. Engel, I think you said before in answer to [REDACTED] questions that Jeff
7 Clark was putting himself forward as someone who would fight more or do more, use the
8 Department's resources more.

9 Did you have any sense as to how he was even in a position to put himself
10 forward, sort of the genesis of his connection to the President or introduction into the
11 conversation with the President?

12 A I mean, we were told that he was introduced to the President by
13 Congressman Perry. I don't believe that Jeff Clark had any prior interactions with
14 President Trump before the election. His role was not one that is likely to bring him to
15 speak with the President directly. And so the introduction was apparently made by
16 Congressman Perry.

17 But this all came from what Clark told Rosen and Donoghue, who then told me.

18 Q I see. So the source of that fact, that it was Congressman Perry, came from
19 Clark himself reporting that to Jeff and Rich, who conveyed it to you?

20 A I mean, that's my understanding or my recollection.

21 Q Did you ever hear anything about the role of the chief of staff,
22 Mr. Meadows, in facilitating Mr. Clark's contact with the President?

23 A No.

24 Q And no other source but Mr. Clark himself indicating that it was Perry?

25 A Yeah. No. I mean, the Acting Attorney General and Rich Donoghue both

1 spoke with the President about Clark before January 3rd. It came up once or twice.
2 And I think at one point Congressman Perry may have reached out to them too. But
3 exactly how --

4 Q Reached out to them, meaning to Mr. Donoghue and Mr. Rosen, reached out
5 to them directly?

6 A I think I heard that. Frankly, I may have read it. I don't remember, I
7 mean. But it may have come up in my conversations with the Acting Attorney General
8 and Rich Donoghue.

9 But in terms of how Mr. Clark got on the map, we understood the introduction
10 was made by Congressman Perry. I don't think we ever had any, and certainly I never
11 had any, other information about that.

12 Q Yeah. I mean, it must have been like a completely out of left field thing,
13 right, the AAG for ENRD and Acting Civil suddenly is put forth as a possible Acting
14 Attorney General. I can imagine that that is a relatively shocking and really surprising
15 thing for folks like you that were part of the Department's leadership throughout, right?

16 A It was surprising to me that Mr. Clark was having these conversations. It
17 was surprising to me that Mr. Clark had the view he did about this proposal.

18 Q Yeah.

19 A And I can say it was surprising to other senior Department officials as well.

20 Q Okay. And was there any discussion about the White House contacts policy
21 and sort of the clear violation of folks down the chain, so to speak, having direct
22 communication with the President or the White House in violation of Department policy?

23 A I think that Mr. Donoghue and Acting Attorney General Rosen raised that
24 with Mr. Clark when they heard about these conversations and likewise instructed him
25 not to have these conversations.

1 Q Didn't take a lot of legal analysis to ascertain that that was a violation?

2 A No. I think that's right, and these were irregular communications that he
3 was having.

4 [REDACTED] Okay. Yeah. I appreciate it, Mr. Engel. Thank you.

5 And, [REDACTED] thanks for letting me jump in.

6 [REDACTED] Sure.

7 Anybody else have questions? Okay.

8 Mr. Engel, can you just walk us through what you recall about the January 3rd
9 meeting that you attended in the Oval Office, starting with how you first heard that there
10 might be such a meeting?

11 Mr. Engel. Yeah. And let me -- actually, why don't I -- why don't we take a
12 5-minute break here?

13 [REDACTED] Sure.

14 Mr. Engel. And then I'll come back and talk about it.

15 [REDACTED] Yes. Perfect. Thanks.

16 Mr. Engel. Thanks.

17 [Recess.]

18 BY [REDACTED]:

19 Q Okay. We're back on the record.

20 Mr. Engel, can you tell us how the meeting with the President of the United States
21 on January 3rd, 2021, came up?

22 A Sure. On Sunday afternoon, January 3rd, I was called by Acting Attorney
23 General Rosen. He said he had spoken with Mr. Clark. Mr. Clark said that the
24 President was ready to make a decision on he being Acting Attorney General and, in fact,
25 wanted to put Mr. Clark in, according to Mr. Clark.

1 Acting Attorney General Rosen said to me that he immediately reached out to the
2 White House, he wasn't going to accept Mr. Clark's word for it, and had scheduled a
3 meeting for that evening with the President to discuss whether the President, in fact,
4 would make any personnel changes.

5 And Acting Attorney General Rosen said that he wanted me to come with him to
6 the meeting. And I discussed that with the White House counsel, and they both wanted
7 me to come. So I said of course I would be available.

8 Q Was there a question about the President's legal authority to make such a
9 change?

10 A No. No. I think that they thought it would be useful for me to be there to
11 provide the perspective of other senior Department of Justice officials with respect to
12 what would happen if Mr. Clark became the Acting Attorney General, including the
13 potential for a significant number of resignations.

14 There was a subsequent call as well with other senior Department officials and we
15 wanted to make sure that the President understood that we did not believe Mr. Clark
16 should be the Acting Attorney General and that if the President, in fact, were to take
17 that -- make that decision, there would be mass resignations, in all likelihood, among the
18 senior Department officials.

19 Q So before we cover that, just to back up. So do I understand you're saying
20 Mr. Clark informed Mr. Rosen that the President had essentially decided that he was
21 going to go forward with making Mr. Clark the Acting Attorney General instead of
22 Mr. Rosen?

23 A I mean, that is what Mr. Clark told Acting Attorney General Rosen.

24 Candidly, I didn't actually think it was going to happen. I mean, I did not believe
25 that that was a reliable report, frankly. But obviously it was a decision that the

1 President was considering, and they scheduled a meeting then for that evening.

2 Q To your knowledge, up until that point, had the President discussed directly
3 with Mr. Rosen the possibility of replacing him as Acting Attorney General?

4 A I think so. I think the context of that would be Mr. Clark says that he can
5 get the Department to do more in pursuing these allegations of election fraud that the
6 President keeps hearing from all the advisers around him. Everyone is saying the
7 Department of Justice is not doing enough. Mr. Clark says he's available to do more.
8 Maybe he should just put Clark in and have Clark go pursue these things.

9 And I think that that had come up at least in the Wednesday meeting that Acting
10 Attorney General Rosen had with the President, and there was a notion that the
11 President would need to make a decision one way or the other, expected to be Monday,
12 January 4th. Ultimately, we had this meeting on January 3rd.

13 Q Okay. And the meeting, again, on January 3rd was at the request of
14 Mr. Rosen, who was then the Acting Attorney General?

15 A Yes. He had reached out to the White House, whether the chief of staff or
16 whoever, Pat Cipollone, to ask to set up that meeting.

17 Q And so it wasn't somebody at the White House or the President himself
18 telling Mr. Rosen that he was planning to go forward. It was Jeff Clark telling Mr. Rosen
19 and Mr. Rosen having to request the meeting with the President. Is that correct?

20 A That is correct. What would have happened if Acting Attorney General
21 Rosen just ignored Mr. Clark and whether the President would have gone forward with
22 this or whether there would have been a meeting, I don't know.

23 But you are correct that, in fact, after Mr. Clark informed Acting Attorney General
24 Rosen of this possibility that the President wanted to make a change, Mr. Rosen -- Acting
25 Attorney General Rosen reached out for the meeting, and the meeting was set up.

1 Q But at that point Mr. Rosen was both the Senate-confirmed Deputy Attorney
2 General as well as the Acting Attorney General.

3 Do you have any understanding as to whether as part of this plan Mr. Rosen
4 would stay in his capacity as Deputy Attorney General?

5 A Well, I think that Mr. Clark suggested to Acting Attorney General Rosen that
6 he would be happy to have him remain as the Deputy Attorney General when and if
7 Mr. Clark became the Acting Attorney General.

8 I don't think that that was a realistic possibility. In other words, it's
9 not -- Mr. Clark apparently proposed that as a possibility.

10 Q What's your understanding as to why that was not a realistic possibility?

11 A Okay. I mean, the Acting Attorney General would have resigned if that had
12 come to pass. He would not have been Mr. Clark's deputy.

13 Q And do you know why?

14 A Well, because, I mean, Mr. Clark was not an appropriate choice to be the
15 Acting Attorney General and nobody close to the Department believed that to be the
16 case.

17 So, I mean, again, the whole -- I mean, Mr. Clark's plan was bad for the
18 Department. It was contrary to sort of law and fact.

19 And so if, in fact, the President had approved this plan and gone forward with it,
20 Acting Attorney General Rosen wouldn't have stuck around to be part of it, nor would
21 really any of the rest us.

22 Q Why?

23 A Because, again, I mean, when we talked about the letter, the letter did not
24 make much sense. It did not seem to be something that was based in fact. It did not
25 seem to be something that was appropriate as a legal matter for the Department to do or

1 say.

2 I did not expect that it would trigger the action that Mr. Clark apparently thought
3 it would trigger, and it would only just damage the Department, frankly. So those of us
4 who cared about the Department would not -- could not have been part of that.

5 Q Was it your understanding that if Jeff Clark had become Acting Attorney
6 General, he would have sent that letter?

7 A I mean, that's what he said, so yes. I mean, I think certainly -- I assume if
8 that sequence of events had happened, I assume he would have sent the letter. He had
9 been arguing that the Department should send the letter for at least 6 days, if not before,
10 at that point. So I expect that would have happened.

11 But as was raised with the President and as he ultimately agreed, the letter would
12 not have -- nobody would have cared what Jeff Clark signed his name to, frankly, because
13 the story would have been that the President had gone through two Attorneys General in
14 2 weeks until he found the environmental guy to say what he wanted to say.

15 And so the President didn't make that decision. But nobody would have taken
16 the letter seriously, in my view anyway.

17 Q Do you have any knowledge of any other actions that Mr. Clark wanted to
18 take if he became Acting Attorney General in addition to sending that letter?

19 A I don't -- I don't -- I'm not aware of any specific actions. And again, I mean,
20 Mr. Clark didn't have a real understanding of what the Department had done and what
21 investigations or reviews had been done by the Department in the first place.

22 And so there was a notion that Mr. Clark would be more aggressive in pursuing
23 these allegations that the President had heard about than Acting Attorney General Rosen
24 or whatnot, but I don't -- it's not clear to me that that action was realistic or that
25 Mr. Clark knew exactly what actions he would take.

1 The only specific proposal that Mr. Clark put forward and the one that was
2 discussed at length with the President was this notion of sending out this letter.

3 Q Do you have any knowledge of whether Mr. Clark would have filed an
4 original jurisdiction suit in the Supreme Court if he became Attorney General?

5 A I don't believe that that issue was being discussed as of January 3rd. To the
6 best of my recollection, the last I heard about that was when the Acting Attorney General
7 spoke with the President on December 31st. And then that didn't come up. It didn't
8 come up again, for example, in the meeting in the Oval Office on January 3rd.

9 Q Okay. If you can look at exhibit 9. That's an email from Patrick
10 Hovakimian. And the signature block says he was at the time Associate Deputy Attorney
11 General. This is dated January 3rd, 4:28 p.m.

12 He writes, "Apologies for the Sunday reach-out. Please join Rich and me for a
13 call at 4:45." And sends dial-in information. So that's a call just a few minutes later
14 after the email was sent.

15 The email was sent to Claire Murray, Jeff Wall, Makan Delrahim, you, John
16 Demers, David Burns, copying Rich Donoghue.

17 Who are -- you can either go through individually or just tell me collectively -- who
18 are the people in that "to" line?

19 A I'd say those are the senior leaders of the Department. Those are folks
20 who were the heads of the various components, the bigger components at Main Justice.

21 Q And -- oh.

22 A And the Associates office as well.

23 Q So tell us what happened on the call.

24 A So up until this point, very few people knew about Jeff Clark's plan at the
25 Department. I think some -- at one point, it was just the three folks, me, Acting

1 Attorney General Rosen, and Mr. Donoghue. I think at some point, Pat Hovakimian
2 came in the loop as well.

3 And the goal of this call was both to inform the Department's other senior leaders
4 about the Jeff Clark possibility, that there was this meeting at the White House to
5 happen, and also to solicit the views of the senior leaders as to what they would do if the
6 President were to designate Mr. Clark the Acting Attorney General.

7 I think it was believed by those of us involved here that it would be helpful for the
8 President to understand this beforehand, to understand that it's not just a matter of does
9 the Department send the letter, but, in fact, the resignations of the Department would be
10 probably fairly widespread at this time.

11 I joined this call late because I was talking with Acting Attorney General Rosen on
12 the other call at that time. I joined for Mr. Hovakimian and Mr. Donoghue advising the
13 other folks on this call as to what was up and then soliciting their view as to whether they
14 would resign.

15 Q And what were their views?

16 A I mean, I think that folks weren't asked necessarily to weigh in on the call.
17 They were asked to reach out after. But it was told to me that everybody was on board
18 with offering their resignation in the event that the President decided to go with
19 Mr. Clark.

20 Q So was there then general agreement among the people on the call that you
21 all would collectively resign if the President went forward with this replacement?

22 A Yes.

23 Q Was there any discussion of a need to have somebody stay behind so that
24 there was somebody around?

25 A Yeah. I mean, to be slightly more precise, I think if, in fact, we got to this,

1 there was -- I had some conversations with Rich Donoghue about whether the head of the
2 National Security Division might stick around.

3 But I think -- I mean, this never -- it was never spoken that granularly. In other
4 words, we didn't discuss this on the call. And ultimately, obviously, nobody wound up
5 resigning.

6 Q And did you have any either emails, texts, or conversations with any of these
7 people after the call to learn more about whether, in fact, they planned to resign?

8 A The Acting Solicitor General reached out to me and just wanted my take on
9 these events since obviously he was hearing about this for the first time. So I spoke with
10 him.

11 I don't think I actually -- I, myself -- spoke with any of the other folks, to the best of
12 my recollection, prior to the meeting with the President.

13 Q So I'm going to ask you a question that may involve things that predate your
14 time at the Department, may even predate when you were born, but I know you're
15 knowledgeable about the history of the Department.

16 Do you know in the history of the Justice Department has there been a situation
17 where there's been a significant number of resignations from the very top people at the
18 Justice Department based on something the President wanted to do?

19 A I mean, I think that the precedents for this that have been discussed is
20 there's -- during President Bush's administration there was some discussion with respect
21 to some of the NSA surveillance activities, about whether or not senior leaders might
22 resign. And then prior to that, obviously, during the Nixon administration, when
23 President Nixon sought to fire the Special Counsel, a couple, the Attorney General and
24 the Deputy Attorney General, resigned at that time. So those would be the relevant
25 precedents that at least I'm aware of.

1 Q Okay. And in the case of President Bush, he didn't, in fact, end up taking
2 action that led to the resignations, correct?

3 A No, he did not.

4 Q Okay. But President Nixon did.

5 A Yes.

6 Q Okay. So was there anything else that you can recall between that phone
7 call which we already discussed and the meeting with the President?

8 A I mean, I'm not sure, I guess, what you -- it's an open-ended question. I
9 mean, obviously I prepared for the meeting and then I headed over to the White House.
10 I drove to DOJ.

11 Q Any other relevant conversations with anybody or communications that you
12 can recall?

13 A I mean, I know that I spoke with Acting Solicitor General Wall. I spoke with
14 Deputy White House Counsel Philbin, I believe, and I think I briefly spoke with Pat
15 Cipollone's assistant as well. That's all that I remember.

16 I was running a little bit behind and wanted to leave my car at the Department, so
17 I wound up making my way to the White House by myself and joining the other
18 participants at this meeting -- other than Mr. Clark -- in Pat Cipollone's White House -- in
19 his office prior to the meeting with the President.

20 Q So you mentioned a call with Mr. Philbin. Can you describe -- I assume you
21 were telling Mr. Philbin what was happening. Did he have a reaction?

22 A No. Mr. Philbin was a participant at the meeting. I don't -- honestly I
23 actually don't remember any substantive conversation with him. I mean, Pat Cipollone
24 and Pat Philbin felt the same way about the Jeff Clark plan as Acting Attorney General
25 Rosen and Mr. Donoghue and myself. But I don't recall -- I don't recall what -- I don't

1 recall anything of substance in that conversation.

2 Q Okay. Before the meeting with the President started, did you have any
3 conversations with Mr. Cipollone or Mr. Philbin about whether they would resign as well?

4 A I believe that Mr. Cipollone and Mr. Philbin may have indicated that they
5 might resign as well, although I don't recall whether and to what degree that came up at
6 the meeting with the President. It was more a focus on the possibility of DOJ
7 resignations.

8 So I guess I hedge because I don't quite remember the status of that. But,
9 clearly, Mr. Cipollone and Mr. Philbin were strongly opposed to the Jeff Clark plan.

10 Q And both Mr. Cipollone and Mr. Philbin had previously been law partners
11 with both Jeff Rosen and Jeff Clark. Is that correct?

12 A Yes. That's right.

13 Q Okay. And so is it safe to say that in addition to them possibly having views
14 about the appropriateness of sending a letter to State officials and some of the things Jeff
15 Clark wanted to do, that both of them would be very knowledgeable about the respective
16 capabilities of both Jeff Rosen and Jeff Clark?

17 A Yeah, I think that's right. But, frankly, personal knowledge of Mr. Clark
18 made it all the more surprising that he thought that this would be a good idea.

19 Q Why is that?

20 A I mean, in other words, a number of us had known Mr. Clark for quite some
21 time, and some of these guys knew him more and better than I did. But I worked with
22 Mr. Clark before. And we were just surprised that he thought that this was appropriate
23 for the Department to do or would be a good idea. It came out of left field.

24 I mean, we knew him to be a thoughtful lawyer with a specialty in environmental
25 law. We did not know him to be someone who would think that he should be ascending

1 to be Acting Attorney General on a program of telling the State of Georgia what to do
2 about its electors, that was surprising, much less the Chinese thermostats and the like.

3 Q And did you have a personal view of Mr. Rosen and his fitness to serve as
4 Attorney General of the United States in an acting capacity?

5 A Sure. I mean, he was the Senate-confirmed Deputy Attorney General.
6 He's a lawyer with a long, distinguished career in private practice and in government and
7 as the Deputy Attorney General was certainly the natural person to be the Acting
8 Attorney General. And in my experience, he had been doing his job as both Deputy
9 Attorney General and then Acting Attorney General the way he saw fit and in the
10 interests of the Department. So, certainly, I thought he was doing his job.

11 Q And prior -- well, in the lead-up to the meeting on January 3rd with the
12 President, did you, in addition to talking to Mr. Cipollone and Mr. Philbin, did you talk to
13 Eric Herschmann?

14 A I mean, I had not talked to Mr. Herschmann prior to January 3rd. He may
15 have been in Pat Cipollone's office before we went into the Oval Office to meet with the
16 President, and he was present at the meeting in the Oval Office.

17 Q Okay. Do you remember whether he expressed a view of this whole plan
18 before the meeting with the President?

19 A Everyone in the meeting with the President other than Mr. Clark was
20 opposed to Mr. Clark's plan. So yeah. Mr. Herschmann thought that this was a bad
21 idea and that Mr. Clark should not be the Acting Attorney General, much less send this
22 letter.

23 Q Okay. Why don't you tell us about the meeting with the President? Walk
24 us through as much detail as you can recall, starting with who was there,

25 A And so present at the meeting initially was the President, and then, as is his

1 custom, those of us who were there sat around in chairs in front of the President's desk.

2 And so it was -- there was Herschmann, Cipollone, Philbin, Rosen, Clark, and me.

3 Mr. Donoghue was not actually invited to the meeting initially, and so he actually
4 sat outside until he was asked to come in relatively short after. But so that was the
5 initial lineup.

6 In terms of -- I think that the President presented the issue as he had been hearing
7 that the Department of Justice -- everyone was wondering why the Department of Justice
8 isn't doing more on these election fraud allegations. And he keeps asking the
9 Department to pursue these things. And Mr. Clark says that he's willing to do more and
10 that he has this plan.

11 And so the question is, why shouldn't he turn to Mr. Clark to do this rather than
12 Acting Attorney General Rosen? That was kind of the framing issue.

13 The earlier part of the conversation focused a lot on particular allegations of
14 electoral fraud, of election fraud. The President --

15 Q Do you remember which ones? Do you remember which particular
16 allegations?

17 A I mean, I don't remember very specifically. I seem to think maybe Georgia
18 and Detroit or Michigan where some of these issues that came up. But basically the
19 President would say people have been saying about this, people have been talking about
20 these votes, there were too many votes here, or these votes were destroyed and the like.

21 And so there was a lot of back and forth to some degree with Acting Attorney
22 General Rosen. Mr. Herschmann also seemed knowledgeable about the nature of some
23 of these allegations.

24 I actually suggested to Mr. Cipollone that we ask for Rich Donoghue to come in
25 since I knew that Rich Donoghue was very knowledgeable about what the Department

1 had been doing as well as the underlying facts on some of these allegations. And the
2 President said, "Oh, of course. Rich is out there? Come in."

3 So I don't know why he didn't -- wasn't there originally, but he came soon after,
4 and the President welcomed him in.

5 Q So if I can just interrupt. Did the people at the Justice Department,
6 whether it was Mr. Rosen, Mr. Donoghue, or anybody else, have a response to each of
7 the questions the President raised about allegations of voter fraud?

8 A Yeah. I think in general they did, and particularly when Rich was there,
9 Acting Attorney General Rosen as well.

10 They tended to be -- were generally familiar with some or most of these
11 allegations and had an explanation for why this particular allegation was not well
12 founded; or said that, we looked into this, and this was the truck of votes in Atlanta that
13 seemed to be rolling in there; or they were destroying the ballots, those were old ballots,
14 those were uncast ballots that they had -- that either the FBI or the U.S. Attorney's Office
15 had sort of made inquiries and had sort of dispelled some of these allegations or most of
16 them. That was certainly the Department's view.

17 Q Do you remember whether the Chinese thermostat issue came up in that
18 meeting?

19 A I don't remember it coming up. I don't recall it coming up in that meeting.
20 I may just not recall it. But I don't -- I can't specifically remember it.

21 Q Do you remember whether the Leonardo issue came up?

22 A I don't recall the Leonardo issue coming up. I don't think it did.

23 Q Okay. So what happened next in the meeting?

24 A So, I mean, eventually the conversation turned towards the Clark plan of
25 having the Department publicly declare to State legislatures that the Department

1 believed that election fraud had materially affected the results in particular States and
2 that the legislatures should come together and should seek to cancel their electors.

3 I mean, I recall making the point to the President that nobody would focus on the
4 content of the letter because the only focus would be how the President had removed
5 two Attorneys General to get to Mr. Clark who was willing to say that. And so that the
6 notion that people would take the letter seriously was just not going to happen.

7 Q Do you remember, did anybody bring up specifically the so-called Saturday
8 Night Massacre, I believe it was called, precedent from the Nixon administration?

9 A I mean, there came a point at the meeting in which we discussed the
10 potential for resignations at the Department.

11 I don't recall the reference to the Saturday Night Massacre specifically. Again, it
12 was a long meeting, so I can't be sure. But at a certain point in the conversation -- I
13 mean, much of the conversation -- some of the conversation centered on Mr. Clark and
14 his lack of qualifications to head the Department.

15 At some point, and I believe Rich Donoghue said that senior Department officials
16 would all resign if Mr. Clark were put in, and the President turned to me and said, "Steve,
17 you wouldn't resign, would you?"

18 I said, "Well, Mr. President, I've been with you through four Attorneys General,
19 including two Acting Attorneys General, and I just couldn't be part of this if Mr. Clark were
20 here."

21 And I said, "And I believe that the other senior Department officials would resign
22 as well. And Mr. Clark would be here by himself with a hostile building, those folks who
23 remained, and nothing would get done."

24 Q What was the President's reaction?

25 A I mean, the President came to agree with that view. I recall what I said, but

1 obviously others were saying the same thing. In fact, at some point I think the President
2 said to Mr. Clark that, "They would eat you alive if we did this." The President ultimately
3 decided that this was a bad idea.

4 Q So I may have sort of interrupted when you were going kind of
5 chronologically through the meeting. Can you just pick up sort of where we left off and
6 continue describing what happened?

7 A I mean, the progress of it was first we discussed election fraud allegations.
8 Then it came to the notion of the Jeff Clark plan. But there were also a number of
9 people, Mr. Herschmann, Mr. Cipollone, making the point that Jeff Clark would not be
10 suitable to be the Acting Attorney General in his own right.

11 And then at some point there was a discussion of the potential for resignations.
12 And it became clear that the President appreciated this was not -- this would not be a
13 good idea. This would not be effective. It would not be appropriate. And it would
14 just wind up having a very deleterious impact not only to the Department, but even to the
15 President's strategy of encouraging challenges to the election.

16 Q What was Mr. Cipollone's position? Or maybe I should rephrase that.
17 What do you recall Mr. Cipollone saying during the meeting?

18 A I mean, I recall -- and maybe I only recall this because I think it was in one of
19 the press accounts of this meeting -- but at some point he referred to the Jeff Clark letter
20 as the murder-suicide pact. He basically said that this is -- it's a disaster, I mean, like it
21 would not -- it would not help. It would immolate Mr. Clark's credibility and it wouldn't
22 help the President either because everyone would basically look at this as an
23 extraordinary event.

24 I mean, at this point in context the President had a lot of people in Congress who
25 agreed with him about these allegations of election fraud and the like, and there were a

1 number -- many Members of Congress who had expressed the view that they intended to
2 challenge the election on January 6th.

3 And had the President taken this action on January 3rd, had there been senior
4 resignations at the Department, had Mr. Clark come out there with his, in my view, crazy
5 plan, this would be -- this would all blow up.

6 This would not be -- it would not be effective. This would not advance the
7 President's interests. Obviously it would be a disaster for the Department of Justice.
8 Which is why we were there.

9 Q Do you remember whether Mr. Philbin said anything during the meeting?

10 A I mean, Mr. Philbin was of the same view as Mr. Cipollone. I don't recall
11 specific comments from Mr. Philbin. But, again, I mean, all of the lawyers in that
12 meeting, other than Mr. Clark, were on the same page.

13 Q Do you remember whether Mr. Cipollone or Mr. Philbin said whether they,
14 too, would resign?

15 A I don't recall. And as I said, I don't recall whether that came up. I mean, it
16 was clear that they were not on board with this plan and that they were strongly opposed
17 and that they were allied with the Department of Justice leaders on this.

18 I don't recall whether, in fact, their statements came out. It was more focused
19 on the Department. But it was clear they wouldn't have been -- they were not part of
20 this and opposed it.

21 Q And you touched a little bit on Mr. Herschmann, but what do you recall Mr.
22 Herschmann saying at the meeting?

23 A I mean, Mr. Herschmann seemed to me to be knowledgeable about some of
24 the allegations of election fraud. And so he in some of the discussions would correct
25 things or explain some things that the President raised about particular allegations, things

1 that had been -- that were not right or had been disapproved or whatnot.

2 He also was particularly critical of Mr. Clark and the notion that Mr. Clark would
3 be a credible head of the Department of Justice under these circumstances.

1

2 [12:14 p.m.]

3

BY [REDACTED]:

4

Q Do you recall whether anybody at some point during the meeting turned to Mr. Clark and said, "We'll call you if there is an oil spill"?

6

A I don't recall that specifically, but, you know, I mean, part of the point was that he's the -- you know, Mr. Clark was an expert on environmental law. You know, he was the confirmed head of the Environmental Division of the Department. He was, before that, you know, an experienced environmental lawyer at Kirkland & Ellis.

10

He had, in a temporary caretaker capacity, headed over to be the acting head of the Civil Division in, you know, July, I think, of 2020. But the notion that he would go there and he would step up to be the Acting Attorney General, much less put himself forward as an expert of, you know, election fraud issues was, you know -- was not very credible.

15

And so one of the things -- one of the arguments that were made -- and it may well have been Mr. Herschmann who said, you know, something along those lines, but, you know, that he was the environmental guy. You know, he was not -- his portfolio did not include leading the Department of Justice, much less, you know, having knowledge of criminal investigation and, you know, leading the Department's criminal investigations, you know, outside of the context of environmental crimes potentially.

21

Q Do you remember anything else about what Mr. Clark himself said during the meeting?

23

A I mean, Mr. Clark made the case for himself, you know, and Mr. Clark, in the context of this meeting, you know, became an -- you know, an advocate for his position. And so he would respond, you know, to what other folks were saying. He would explain

1 why he thought that this was a good idea, why this would be taken seriously.

2 You know, at one point, I seem to recall that, you know, before it was clear the
3 President was not going to go with this, I think he -- he sort of said something like,
4 Mr. President, you know, or Mr. Trump -- he actually referred to him as Mr. Trump, which
5 was odd, frankly. You know, that's, you know, not the way other people would tend to
6 refer to the President. You said -- like, oh, we should call the question, at one point, he
7 said, because I think he thought, you know, that -- he had some impression that the
8 President was leaning his way, you know, maybe from a prior conversation, and was
9 hoping to sort of preferment the discussion, but that didn't happen.

10 And ultimately the President -- when the President said that he would not go with
11 Mr. Clark, Mr. Clark tried to reargue a few times. He said: But,
12 Mr. Trump -- Mr. Trump, you know, I think you should consider this, or consider that, or
13 et cetera.

14 And so, you know, he tried to make the case and prolong the meeting in hope that
15 apparently that the President would go his way. For whatever -- I don't know, you
16 know, where he was before this meeting, but he certainly spoke as an advocate for
17 becoming the Acting Attorney General.

18 Q So is it fair to say that Mr. Clark continued to argue his case even after the
19 President appeared to have made a decision?

20 A Yes. Yeah. You know, I mean, there were one or two, you know,
21 rearguments. I mean, you know, as -- as a litigator myself, you know, I'm familiar with
22 situations where the judge indicates things, and sometimes the lawyer will try to keep
23 talking in the hope that he can get the judge to reconsider. In certain courts, that
24 actually can be, you know, somewhat effective, but generally it doesn't work, and
25 certainly it didn't work here.

1 Q Well, there is the scene in "A Few Good Men" when Demi Moore objects to
2 something, and the judge says, overruled, and she says, "But I strenuously object."

3 So how did the President react when Jeff Clark continued to argue his case after
4 the President had appeared to make a decision?

5 A No. I think the President, I mean, concluded -- you know, again, there
6 was -- you know, there was more talk. I mean, you know, Jeff Clark makes his point.
7 Somebody else may rebut him. But, clearly, I mean, the President decided that this is a
8 bad idea.

9 You know, like I said, at some point, he said something like, you know: They'd
10 eat you alive, so, you know, that this would not -- you know, this would not work. You
11 know, the President recognized that -- you know, that this was a bad idea.

12 You know, and so, you know, ultimately it became clear that the President made
13 up his mind. He then said -- at one point, he said, you know: What's going to happen
14 to Mr. Clark? Or "What's going to happen to this guy," he said.

15 You know, he -- it was clear the President didn't want Department officials to
16 retaliate against Mr. Clark, who, you know, was seeking to, you know, pursue what he
17 perceived to be the Department and the President's interests. And so, you know, I think
18 Acting Attorney General Rosen said: You know, no, he's a Presidential appointee. You
19 know, we can't fire him. Only you can do that.

20 He said: Yeah, I don't want anything to happen to him.

21 And he said: No, that's -- of course.

22 And, you know, so that was -- that was clear on that front.

23 Then the -- you know, the President said: So are you saying really that there is
24 nothing that we can do here?

25 And, you know, Acting Attorney General Rosen said: Yeah, I don't think -- you

1 know, I'm sorry, Mr. President, I don't think that there is, you know, there is much we can
2 do.

3 There was some discussion -- I don't remember who raised it, but just was simply,
4 you know, the notion that criminal investigative techniques would be effective in a
5 contested election is not really -- it's just not the way criminal investigations work.
6 Criminal investigations are under much slower timeframes.

7 To the extent the question is we should be looking at allegations of election fraud
8 in order to discover the facts that could lead people to change their minds or change their
9 votes or to cancel votes, you know, it's just that the timeframe didn't work. You know,
10 so, while the Department did look into allegations as they were made, ultimately sort of
11 the tool of doing this is not the way elections are contested. They're contested in civil
12 courts, and they're contested by the campaigns. So I think there was some discussion of
13 that.

14 And then, I mean, Mr. Clark suggested that OLC provide a legal opinion to the Vice
15 President with respect to his authority when it comes to opening the votes as the
16 President of the Senate on January 6th.

17 And I shot down that idea, but I said -- I said: That's an absurd idea. The -- you
18 know, the Vice President is acting as the President of the Senate. It is not the role of the
19 Department of Justice to provide legislative officials with legal advice on the scope of
20 their duties. And -- you know, and -- not to mention it was 3 days from the date. OLC
21 doesn't tend to provide the legal opinions, you know, in those cases, you know, in that
22 short timeframe.

23 And the President said: Yeah, no, that's -- that's -- nobody -- nobody should be
24 talking to the Vice President here. And --

25 Q Did you have an understanding as to why the President was saying nobody

1 should be talking to the Vice President?

2 A I think he -- he basically -- he did not want that group to be reaching out to
3 the President, or the Vice President. He didn't explain further, so, I mean, you know,
4 other than, you know, Clark's idea of DOJ, OLC reaching out to the Vice President with
5 legal advice was not something that the President supported.

6 Q And did Mr. Clark suggest just that OLC look into the question of the role of
7 the Vice President, or did Mr. Clark suggest that OLC should adopt a particular position
8 regarding the role of the Vice President?

9 A I mean, I think Mr. Clark's idea was that OLC would opine that the Vice
10 President had the discretion to set aside the votes in this context, I think. You know,
11 again, there was -- I mean, that -- he was trying to raise how the Department could be
12 helpful to the President in this context, and, you know, unexpected to me, raised this idea
13 of an OLC opinion on a subject that OLC had not, you know, been asked by the Vice
14 President or otherwise to -- you know, to directly opine on, you know, other than
15 obliquely in the Gohmert, or the -- informally in the Gohmert litigation, but -- and so -- so,
16 yeah, that's -- I don't think -- Mr. Clark was not necessarily suggesting we should, you
17 know -- he had a view, or he seemed to suggest a view as to what would be the right
18 answer. But we never discussed the merits, and I -- I objected on procedural grounds,
19 so to speak, and that was it.

20 Q At that time, were you aware that John Eastman had been advocating a
21 similar theory about the role of the Vice President?

22 A I was not aware at that time.

23 Q Okay. And, at that time, were you aware that Jenna Ellis had been
24 advocating a similar theory?

25 A No. I wasn't aware. I mean, I think I was aware of public discussion of

1 what level of discretion the Vice President had in this, but I wasn't aware of, you know,
2 what -- just what were disclosed to be these private conversations, you know, with the
3 Vice President, John Eastman, and others. I wasn't aware.

4 Q And were you aware of the views of one of your predecessors as the head of
5 OLC, Mike Luttig?

6 A I don't think so. I think that -- I think when Judge Luttig kind of weighed in
7 or when the Vice President cited Judge Luttig's views on this, I think that was all news to
8 me. You know, and to the extent I was aware of Judge Luttig on this, it would always be
9 because he tweeted or wrote something, you know, in the press about it.

10 I was not aware that Vice President was consulting with Judge Luttig.

11 Q Okay.

12 [REDACTED] So I'll pause here before we talk about what happened after the
13 meeting. Does anybody have any questions about that meeting?

14 [REDACTED] B.J. Pak.

15 BY [REDACTED]

16 Q Was there any discussion of the U.S. attorney for, I believe, the Northern
17 District of Georgia, B.J. Pak?

18 A Yeah. So the one other piece of business that happened kind of right after,
19 before the meeting ended, was that, you know, the President said, you know, that the
20 U.S. attorney in Atlanta, B.J. Pak, was a Never Trumper. And he held up a piece of paper
21 that someone must have handed him, which purported to quote Mr. Pak speaking in, like,
22 2016 and saying something critical about President Trump, or then candidate Trump, you
23 know, about him.

24 And -- and he said, you know -- basically, he said that he believed that the U.S.
25 attorney in Atlanta was not investigating allegations of election fraud, you know, the way

1 he thought that they should be investigated, and so he said, you know, we need to
2 replace the U.S. attorney there.

3 And Mr. Donoghue said, you know, actually, Mr. Pak has informed the
4 Department that he's going to be resigning soon. I think he had said some U.S.
5 attorneys stay until relieved by the new administration, and I think Mr. Pak had indicated
6 he was going to resign at or about January 20th and head back to private practice.

7 And so, you know -- and I think, you know, others said -- maybe Mr. Cipollone or
8 others said, you know: Well, look, we're not going to fire someone who is resigning
9 anyway.

10 And the President said: Well, he's got to -- you know, he's got to go.

11 And Mr. Donoghue said he would speak with Mr. Pak and see whether Mr. Pak,
12 you know, was interested in accelerating his resignation.

13 And the President said: You know, one way or the other, we need a new U.S.
14 attorney there. The President raised Bobby Christine as a U.S. attorney in Georgia that
15 he had heard good things about, and -- and, if -- and, you know, if there was a vacancy at
16 the U.S. attorney in Atlanta, another U.S. attorney could be designated as the acting U.S.
17 attorney.

18 And so, you know, we advised the President that was within his -- his lawful
19 authority if and when Mr. Pak were to resign or be removed.

20 The President then said he wanted to talk to Mr. Christine. And so, you know,
21 the President called Mr. Christine on speakerphone and told him that there was going to
22 be a vacancy for the U.S. attorney in Atlanta and he wants him to -- you know, he'd like
23 him to go in and -- you know, and get in there.

24 And, as far as I could tell, Mr. Christine was surprised by this call. He was not
25 aware of any of this. But Mr. Christine agreed to serve, you know, in that capacity.

1 And so, you know, the President asked him to, you know, go forward and, you know, to
2 do that.

3 And then, you know, from a processing standpoint, ultimately Mr. Pak did resign
4 the next morning, and Mr. Christine was designated that afternoon as the acting U.S.
5 attorney in Atlanta.

6 Q Did the President say anything to Mr. Christine about election fraud
7 investigations?

8 A Nothing other than, you know, you know, we need you to get in -- I mean, I
9 don't specifically recall, but it wouldn't have been anything other than we need you to get
10 there and look at -- look at things and, you know, you know, look at what's going on or
11 the like, you know, with all these election fraud allegations. It would have been, you
12 know, very, you know, generic or whatever. But I -- you know, it was not -- there was
13 nothing specifically discussed about particular cases or investigations or anything.

14 Q Did you get the impression that the President believed that, by making this
15 change, there was still a possibility that there could be an investigation that would change
16 the outcome of the election in Georgia?

17 A I mean, I think the President's view on these things was to keep pushing
18 everything he could do. I mean, he made clear at this meeting that he believed that the
19 election was stolen from him and that he's going to keep fighting, you know, on these
20 things as best as he could.

21 And so I wouldn't say the President thought that this would be ultimately
22 successful. People around the President had told him that B.J. Pak wasn't doing his job
23 or was -- you know, was not looking at things.

24 We didn't believe -- you know, and senior Department officials didn't believe that
25 this was correct. But -- so the President thought that these same people apparently had

1 a better view of Mr. Christine than they thought, you know, that he would get in there
2 and look at things. I think ultimately, you know, Mr. Christine reached the same, you
3 know, conclusion that, you know, Mr. Pak did there.

4 And I think that the President thought that this would make all the difference, but,
5 for whatever reason, he thought that the U.S. attorney in Atlanta was not doing enough.

6 Q Is there anything else you can recall from the meeting with the President
7 that you haven't told us?

8 A No. I mean, like I say, it was a long -- you know, it was a long meeting, but I
9 don't recall anything else off the top of my head other than what we've discussed.

10 Q Roughly how long was the meeting?

11 A I feel like it was about 2 hours. The emails and the chron probably identify
12 this a little clearer, but it was something of that nature.

13 Q Okay. And so why don't we look at exhibit 26. And it looks like these are
14 texts between you and Claire Murray. Claire Murray's are the ones in green. If you go
15 to the second page.

16 A Yeah.

17 Q At 10:12, she wrote: Great outcome. Congrats, and thanks for
18 everything. You've pushed things in the right direction.

19 What do you think she meant by that?

20 A Well, I mean, I think it, you know, kind of speaks for itself, I mean, but, you
21 know, she as another senior Department official was supportive, you know, of the
22 Department and believed that the Jeff Clark plan was a -- you know, a very bad idea.
23 And so just saying, you know, congrats that, you know, we were able to persuade the
24 President that this is the right idea.

25 Q Okay. And if you look at exhibit 12. And this one, I guess, may be a little

1 bit earlier chronologically, but this is -- the bottom half of the page is the email we've
2 already discussed from Patrick Hovakimian to senior leaders setting up the call before the
3 meeting.

4 And, at 9:07 p.m., Mr. Hovakimian wrote: I have only limited visibility into this,
5 but it sounds like Rosen and the cause of justice won.

6 What did you understand him to mean by "the cause of justice won"?

7 A Yeah. I mean, I think that -- you know, that, in fact, the President stuck
8 with the Acting Attorney General and -- and did not go with Mr. Clark.

9 Q Okay. And then you responded: Still at WH, but that is correct.

10 So I assume that means you agreed with Mr. Hovakimian that the cause of justice
11 had won?

12 A Yes. I mean, the sequencing here is we had finished the meeting. Those
13 of us other than Mr. Clark went back to Pat Cipollone's office for, you know, a period of
14 time before we went back to the Department of Justice. And so someone must have
15 reached out to, you know, Pat Hovakimian and gave him a heads up at the result of the
16 meeting, and, you know, had a -- at some high level, you know.

17 Q Did Mr. Clark say anything on the way out of the meeting or after the
18 meeting?

19 A I mean, Mr. Clark basically said, you know, I hope, you know, that this will
20 not affect our personal relationships, you know, and understood we're all, you know,
21 trying to do our best here, you know.

22 And, you know, I think the rest of us kind of, you know, just acknowledged that
23 fact, although obviously there was a personal dimension to this because Acting Attorney
24 General Rosen had been a big supporter of Mr. Clark at the Department. And so, while I
25 have no doubt that Mr. Clark, you know, thought he was doing what was best in his own

1 judgment, there was a sort of personal element of, you know, betrayal here in basically
2 trying to depose Mr. -- you know, Acting Attorney General Rosen here.

3 So, you know, that was, you know, a slightly awkward conversation there. And
4 then I said the rest of us went up to Mr. Cipollone's office, and Mr. Clark, you know, you
5 know, left the White House.

6 Q Okay. Tell us about the discussion in Mr. Cipollone's office.

7 A I mean, I don't think that there was much to say. It was other -- you know,
8 it was a group of litigators discussing, you know, an argument, so to speak, you know,
9 that had just happened, and sort of, you know, agreeing that -- you know, that the
10 President reached the right result and we were happy for -- you know, for it, you know, so
11 I said, you know, recapping of lines from the meeting essentially, but, you know. To the
12 extent that we were -- you know, we were contesting this proposal, we had been
13 successful, and so it was kind of a victory meeting in that sense.

14 Q So can you tell me about any conversations or communications you had,
15 other than what we've already covered, with other senior leaders of the Department
16 after the meeting in terms of their reaction?

17 A Well, as this -- as I think some of these emails indicate, you know, we
18 had -- after we left the White House Counsel's Office, Acting Attorney General Rosen,
19 Mr. Donoghue, and I went back to the Deputy Attorney General's office, and at which
20 point we called -- you know, they set up a call with, you know, the other senior officials
21 who had been called earlier the afternoon, and Acting Attorney General Rosen and I gave
22 kind of a recap of the meeting, you know, at that point.

23 Q Okay. What was the reaction among the senior leaders?

24 A I think people were pleased at the result. You know, as noted, there wasn't
25 a lot of support for this idea.

1 Q So this calls for some speculation, but if Mr. Clark had been appointed Acting
2 Attorney General, how would -- how do you think that the sort of career people at the
3 Justice Department -- and that would include, you know, law enforcement agents at the
4 FBI, DEA, ATF, et cetera -- what do you think their reaction would have been?

5 A Yeah. That would -- everybody -- it would have been a disaster. And this
6 was a point that was made to the President, and I think I made this point to the President
7 as well. I mean, you know, Mr. Clark would have been sitting there by himself at the
8 Department under very extraordinary circumstances, be very demoralizing, but, you
9 know, I mean, Department officials, including career officials and everybody else, are not
10 automatons.

11 Nobody -- it's not as though, you know, as soon as Mr. Clark became the Acting
12 Attorney General, he would be able to marshal the resources of the Department of
13 Justice. You know, separate from resignations, you know, people would not listen to
14 him in all likelihood.

15 And so, you know, there are no set of facts in which Mr. Clark being appointed
16 Acting Attorney General would have wound up working out for Mr. Clark, the
17 Department, or -- or, you know, the interests of the President either. That was my view.

18 [REDACTED] Okay. Does anybody else have questions of what we've covered so
19 far before I turn to January 6th?

20 Okay.

21 BY [REDACTED]:

22 Q Mr. Engel, if you can look at exhibit 24. This is an email you sent, the first
23 one chronologically, January 6th, 3:51 p.m., to Jeff Rosen, Rich Donoghue, and
24 John Moran. Subject: D.C. unrest.

25 You wrote: I just got out of a meeting and see reports of the chaos in D.C.

1 Please let me know if I can be of any help.

2 What prompted you to send that email?

3 A Yeah, I mean, so I had been -- I had worked from home on January 6th
4 simply because I can do much of what I can do from home, and, you know, the
5 traffic -- the streets were shut down. We obviously didn't anticipate, you know,
6 quite -- had we known of the civil unrest that kind of ensued, I probably would have made
7 it in, but, you know, we assumed that it would be, you know, a contentious but -- you
8 know, but police action, you know, you know, that things would be under control.

9 So I had -- I happened to be that, when the Capitol was breached, I was in a video
10 meeting that, you know, lasted for some time, and so I only appreciated what happened
11 when I got off the video call. So it would have been, you know, shortly around that
12 point, at which point, obviously I reached out to the Acting Attorney General and Rich
13 Donoghue by email and by phone, you know, to see, you know, how I could help.

14 Q Okay. And what was their response?

15 A Well, I mean, I think this email reflects, you know, at least one of the
16 responses. But, you know, OLC's role in the context of civil unrest is often making sure
17 that people have the necessary authority how to act, so there are Federal law
18 enforcement officers of various stripes who, you know, normally do one thing, but, in an
19 emergency, can be given the authority to do other things. So deputations, assignment
20 of additional functions, and the like.

21 We also are involved in providing advice to the military authorities when it comes
22 to the National Guard or when it comes to, you know, regular troops in these contexts.
23 And so, you know, those were -- you know, as Acting Attorney General Rosen's question
24 indicates, you know, we started looking there on deputations and likewise of the National
25 Guard for the Capitol.

1 And, I mean, I think the -- there was a statement that DOD made that said that the
2 Army was activated, which I think was a slight misnomer, which the email here reflects,
3 you know, whether folks who had been called into regular service -- I don't think that that
4 actually was ever done. There is a distinction between active service and service as the
5 National Guard, so, technically, you know, State officials that are often performing
6 Federal missions.

7 And so -- so, I mean, this email reflects some of the back and forth. And over the
8 next hour or two, you know, my role and OLC's role was trying to make sure that people
9 had the necessary authorities.

10 Ultimately, you know, things got under control fairly quickly, for the most part. I
11 mean, you know, by this point. Obviously, you know, damage had already been done,
12 and, within an hour or two, you know, most of the missions -- the law enforcement
13 mission seemed to be just making sure that, you know, some of the rioters were not still
14 in the building one way or the other.

15 So I don't think there were a lot of extraordinary authorities that actually had to
16 be invoked, you know, that evening, you know, once the National Guard folks kind of
17 came over and the police got a hold of it and the like. But, you know, for the 2 hours or
18 so on January 6th, that was, you know, kind of what OLC was looking into.

19 Q And did you end up providing advice to anybody?

20 A I mean, I think that we wound up -- you know, we wound up working with
21 people on the necessary authorities. I don't know that we actually needed to, you
22 know, sort of sign paperwork and kind of grant additional authorities that evening.
23 Either people already had the authorities because the Metropolitan Police, you know,
24 were working with people or otherwise.

25 So I think, you know, again, I mean, I think it wasn't a situation where we needed

1 to -- we had the timeframe to ramp up and provide additional authorities. And, by the
2 time, you know, I -- you know, order had been restored by the evening, at which point,
3 you know, it wasn't necessary to do that stuff.

4 So, you know, we had conversations and discussions about what needed to be
5 done, but I don't recall signing paperwork that evening.

6 Q Okay. Were you involved in any discussions about whether to utilize the
7 Insurrection Act?

8 A No. I don't think that there were any discussions on January 6th about, you
9 know, invoking the Insurrection Act. It's actually not needed in Washington, D.C., and
10 probably actually wouldn't even be needed if you wanted to send troops to protect the
11 function of the Capitol. But -- so that -- as of January 6th, that was not an issue that was
12 on the table.

13 Q Okay. And did you have any conversations about possible use of the
14 Insurrection Act in connection with the November 2020 election or the January 6th joint
15 session of Congress at all, whether on January 6th, or any other date?

16 A I mean, with respect to the election, I don't recall any conversations about
17 using the Insurrection Act, you know, there. I mean, the Insurrection Act is a
18 break- the-glass authority in which active military troops are used in a case in which law
19 and order has otherwise broken down.

20 Prior to reaching that point, the regular law enforcement has to be overwhelmed,
21 and the National Guard that's available has to prove to be ineffective in handling it. So,
22 you know, part of the problems on January 6th appeared to be that National Guard and
23 local law enforcement weren't effectively deployed on the front end, but we never got to
24 the situation -- once they were able to catch up, you know, they were able to restore
25 order.

1 We never got to the situation in which the Insurrection Act was necessary. And
2 so I'm not aware of any conversations before or after, you know, that suggested that
3 would be necessary.

4 Q Were you involved in any discussions about whether any Federal agency had
5 authority to seize the voting machines?

6 A No. No. I -- I've seen press reports that, you know, an outside official
7 may have proposed that idea at some point. You know, not official -- an outside person
8 may have proposed that to the President, but that was never proposed -- you know, no
9 one ever sought OLC's advice on that.

10 Q Were you involved in any discussions about possible invocation of the 25th
11 Amendment of the Constitution?

12 A Not in connection with, you know, post-election or the like.

13 Q All right. Were you involved in any discussions about possible use of the
14 25th Amendment at all during the Trump Presidency?

15 A | --

16 Mr. Weinsheimer. I would object to that question. That is not -- that's beyond
17 the scope of the authorization.

18 [REDACTED] Okay. I don't have any other questions.

19 Does anybody else have any questions?

20 Nothing for me.

21 _____ Anyone else?

22 [REDACTED] No, I don't.

23 Thank you, Steve. We really, really appreciate it.

24 Mr. Engel. Thank you.

25 Okay. So, Steve, I actually do have one last question. Do you

1 have any suggestions on any legislative or policy changes that Congress could make to
2 help prevent the tragedy of January 6th from happening again?

3 Mr. Engel. No. Look -- look, I think that, you know, there probably is some
4 potential for resolving ambiguities of the Electoral Count Act. You know, none of that
5 actually ultimately affected January 6th, in point of fact, and the parts that were not
6 disputed -- you know, electoral certificates, there weren't competing slates and the like,
7 but I think some of the discussions about problems and the ambiguities in that statute
8 that probably -- are probably worth revisiting.

9 But, you know, otherwise, obviously, I think, to some degree, some of what
10 happened on January 6th appears to have been an operational problem, you know, with
11 respect to law enforcement positioning and the law enforcement coordination. I don't
12 know whether legislation itself is the solution to that versus, you know, preparation.
13 And obviously the threat was underestimated the day of.

14 [REDACTED] Okay. Thank you very much for your time. We greatly appreciate
15 it.

16 And, with that, we'll go off the record.

17 [Whereupon, at 12:45 p.m., the interview was concluded.]

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Certificate of Deponent/Interviewee

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I have read the foregoing ____ pages, which contain the correct transcript of the
answers made by me to the questions therein recorded.

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Witness Name

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